TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19[illegible].

No. [illegible]-259.

WILLIAM STEWART MACLEOD, AS SOLE SURVIVING PARTNER OF THE PARTNERSHIP OF MACLEOD & CO., APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 20, 1926.

([illegible])

(22,596.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 975.

WILLIAM STEWART MACLEOD, AS SOLE SURVIVING PARTNER OF THE PARTNERSHIP OF MACLEOD & CO., APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print
Petition	1	1
Traverse	10	5
Argument and submission	11	5
Statement of subsequent proceedings in this case	11	6
Findings of fact as amended and conclusion of law	12	6
Opinion of the court	17	11
Final judgment of the court	20	15
Application for and allowance of appeal	21	16
Certificate of clerk to transcript	22	16

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 8, 1911.

1 1. *Petition. Filed December* 30, 1904.

In the Court of Claims.

No. 27196.

WILLIAM STEWART MACLEOD, as Sole Surviving Partner of the Partnership of Macleod & Co.,
vs.
THE UNITED STATES.

Petition.

To the Honorable the Chief Justice and Judges of the Court of Claims:

Your petitioner, William Stewart Macleod, as sole surviving partner of the partnership of Macleod & Co., respectfully represents:

1. That at and prior to the dates hereinafter mentioned, your petitioner and Neil Macleod and Henry Anthony Macleod were in partnership under the firm name of Macleod & Co., doing a
2 general mercantile business in the Philippine Islands and in other parts of the Orient, with their head office at Manila, P. I. All the members of the firm were citizens and subjects, and this petitioner still is a citizen and subject of Great Britain, but he resides at Manila, P. I., and has so resided for several years prior to the dates hereinafter mentioned. Neil Macleod and Henry Anthony Macleod have deceased, and this petitioner is the only survivor of such partnership.

2. As citizens of the United States have the right to bring and maintain actions against the government of Great Britain in the courts of that Kingdom, your petitioner is, therefore, entitled to bring and maintain this action in this court.

3. It is provided by Section 2, Article 2, of the Constitution of the United States, that "The President shall be Commander-in-Chief of the army and navy of the United States." During the years 1895 to 1898 there was an insurrection in the Island of Cuba against the government of Spain and controversies existed between the United States and Spain with reference to conditions in that island, which finally culminated, April 20, 1898, in the adoption by the Congress of the United States of a Joint Resolution for the recognition of the independence of the people of the island, demanding that the government of Spain relinquish its authority and government there and withdraw its land and naval forces from Cuba and Cuban waters; the third part of such resolution being in the language following:

3 "That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into actual service of

the United States the militia of the several States, to such extent as may be necessary to carry these resolutions into effect."

On the 25th of April, 1898, the Congress of the United States passed an act, 30 Stat., 364, as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, First. That war be, and the same is hereby, declared to exist, and that war has existed since the twenty-first day of April, anno Domini eighteen hundred and ninety-eight, including said day, between the United States of America and the Kingdom of Spain.

Second. That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry this Act into effect."

Immediately thereafter war was waged by the contending powers and among the early results thereof was the capture of Manila Bay and harbor and the destruction, or capture, of the Spanish fleet there by the forces of the United States.

4. Pursuant to the constitutional provision, and to the
4 Resolution and Act of Congress *all* above set forth, the following order of the President was promulgated:

"WAR DEPARTMENT,
WASHINGTON, *July* 13, 1898.

The following order of the President is published for the information and guidance of all concerned:

EXECUTIVE MANSION, *July* 12, 1898.

By virtue of the authority vested in me as Commander-in-Chief of the Army and Navy of the United States of America, I do hereby order and direct that upon the occupation and possession of any ports and places in the Philippine Islands by the forces of the United States the following tariff of duties and taxes, to be levied and collected as a military contribution, and regulations for the administration thereof, shall take effect and be in force in the ports and places so occupied.

Questions arising under said tariff and regulations shall be decided by the General in command of the United States forces in those islands.

Necessary and authorized expenses for the administration of said tariff and regulations shall be paid from the collections thereunder.

Accurate accounts of collections and expenditures shall be kept and rendered to the Secretary of War."

WILLIAM McKINLEY.

5 Upon the occupation of any ports or places in the Philippine Islands by the forces of the United States the foregoing order shall be proclaimed and enforced.

R. A. ALGER,
Secretary of War.

Manila was opened to commerce as a port of entry August 20, 1898, in obedience to instructions from the President, and Iloilo was opened February 22, 1899; Cebu, March 14, 1899; Zamboanga, Siassi, and Jolo, December 26, 1899. (Senate Doc. No. 134, 57th Congress, 1st Session, and page 128, Report of the War Department, 1899, Vol. 1, part 4, Report of the Major General Commanding the Army, In three parts, Part 2.)

5. In December, 1898, or in the early part of January, 1899, Macleod & Co., entered into a contract for the sale and delivery of a cargo of rice at the port of Cebu, Island of Cebu, and on January 22, 1899, they caused the American ship "Venus," laden with such a cargo, to sail from Saigon, China, to the port of Cebu. Before the ship sailed from Saigon, a representative of Macleod & Co., applied to the U. S. Consul there and obtained from him the proper and necessary consular dispatches for the shipment of said cargo. The "Venus" reached Cebu in due course and on arriving there it was found that the port of Cebu, as well as the entire island of Cebu, was, and had been for several months in the peaceful and undisputed possession and control of the people of the island, who
6 had given their allegiance to what was named and known as the "Republica de Filipinas," headed by Aguinaldo and other prominent men, and that Luis Flores was the local Presidente, in the island, of the "Republica de Filipinas." On the 4th of February, 1899, and since the evacuation by the Spanish forces of the island, which occurred on or about the 26th day of December, 1898, the officers of the "Republica de Filipinas" aforesaid, were, and had been, as the representatives of the people of the island, maintaining and preserving order throughout the island, performing the usual functions of government there and collecting customs duties on imports, through their customs officials. On February 4, 1899, said customs officials required and exacted from Macleod & Co., the payment of duties on such cargo of rice, then being in that port, in the sum of 11,045 pesos and 50 cents, which payment was made in full on that day by Macleod & Co., but under written protest filed with, and acknowledged by, such customs officials. On the payment of such duties the cargo of rice was discharged from the ship "Venus" and delivered to the purchasers thereof in Cebu. No officer of the United States, nor any troops thereof, were in the island at the time of the making of the said payment, nor had any officers or troops of the United States been there between that date and the time of the declaration of war aforesaid. From and after the date of the evacuation of the island of Cebu by the Spanish authorities, as above stated, the island had been, and at the time of the
7 making of the payment aforesaid, still was in the undisputed and peaceful possession of the people of the island, who had established and maintained a *de facto* government for the entire island, its ports and cities, and in the latter had effective municipal governments, including complete police patrole for preserving peace and good order, and the United States had not been, and were not when such payment was made, in the occupation and possession of the port of Cebu, or the island of Cebu.

6. Subsequently, March 3, 1899, the officials of the United States government, charged with the collection of duties at the port of Manila, Philippine Islands, demanded of Macleod & Co., payment of duties upon the aforesaid cargo of rice so shipped from Saigon and discharged at the port of Cebu, as above stated, and the following day they were notified by the United States Collector of Customs at Manila that his office would not receive further business from Macleod & Co., until the duties pending upon the said cargo of rice, by S. S. "Venus" from Saigon to Cebu, were paid. Thereupon, March 6, 1899, and under written protest, Macleod & Co., paid to the said Collector of Customs at Manila the sum of 11,045 pesos and 50 cents, that being the same amount as was paid by them in Cebu on February 4, 1899, as above stated. On March 18, 1899, the said Collector of Customs at the port of Manila claimed the further sum of 112 pesos and 28 cents as customs duties on said cargo, and on the 20th day of March, 1899, Macleod & Co., paid this additional sum to such Collector, making a total payment of
8 11,157 pesos and 78 cents. Both of said payments were made under the written protest of Macleod & Co., who insisted and objected that the United States had no lawful right to exact the same. At the time the hereinbefore described payments were made to the United States authorities, the established rate for the coin "pesos" was fifty cents in the gold coin of the United States, and the total established rate for the money so paid by Macleod & Co., to the United States was $5,578.89 in the gold coin of the United States.

7. Macleod & Co., made repeated demands on the authorities of the United States in Manila for the reimbursement of the duties paid by them at the port of Manila on the cargo of rice, as above set forth, but such demands were each time refused, the last refusal being in writing, under date of November 2, 1899, and by the direction of the Military Governor of the Philippine Islands. No other action than the foregoing has been taken relative to the claim sued on.

8. The said surviving partnership of Macleod & Co., is the sole owner of the claim herein sued on, it not having been sold or assigned, in whole or in part. The petitioner, representing such surviving partnership, has been damaged by reason of the premises, in the sum of $5,578.89 in United States gold coin, to which amount the petitioner, as surviving partner, is justly entitled, after allowing all just credits and set-offs, if any.

Wherefore your petitioner prays judgment against the
9 United States for the sum of Five Thousand, Five Hundred and Seventy-eight Dollars, and eighty-nine cents, ($5,578.89).

DUDLEY & MICHENER,
Attorneys of Record.

BARRY MOHUN,
LYON & WOLFSON,
Counsel.

DISTRICT OF COLUMBIA, *ss:*

Personally appeared before me, a Notary Public in and for the District aforesaid, Louis T. Michener, who being duly sworn according to law, deposes and says that he is one of the firm of Dudley and Michener, which is duly authorized and empowered to make oath by a power of attorney duly executed by Macleod & Co., that he has read and understands the foregoing petition, and that the matters and things therein set forth are true in substance and in fact, as he is informed and believes.

LOUIS T. MICHENER.

Subscribed and sworn to before me, this 29th day of December, 1904.

[SEAL.]

L. P. SQUIER,
Notary Public, D. C.

10 2. *Traverse. Filed March* 29, 1910.

In the Court of Claims of the United States, December Term, A. D. 1910.

No. 27196.

WM. STEWART MACLEOD, Surv'g Partner, &c.,
vs.
THE UNITED STATES.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

JOHN Q. THOMPSON,
Assistant Attorney General.

11 3. *Argument and Submission of Case.*

MARCH 29, 1910.

This case was argued by Mr. Louis T. Michener and Mr. Barry Mohun, for the claimant, Mr. Frederick De C. Faust was heard for the defendants and the case was submitted.

4. *Statement of Subsequent Proceedings in this Cause.*

On May 2, 1910, the Court filed a finding of fact and conclusion of law and ordered judgment to be entered as follows:

"The Court on due consideration of the premises find for the defendants and do order, adjudge and decree that the petition of the claimant, William Stewart Macleod, as sole surviving partner of the

partnership of Macleod and Company, be and the same is hereby dismissed."

BY THE COURT.

On July 26, 1910 the claimant filed a motion to amend findings of fact, and on January 9, 1911 said motion was argued and submitted.

On January 16, 1911 the Court filed an order allowing in part and overruling in part claimant's motion to amend findings;—withdrawing the former findings of fact and filing amended findings in lieu thereof, and ordering the judgment and opinion of May 2, 1910 to stand.

On February 23, 1911 the claimant filed a motion to amend Finding III (the defendants consenting) and the same was allowed by the Court by adding to said finding III the words "but aside from this there is no evidence charging the claimant with knowledge of this fact."

On March 6, 1911 the Court filed its findings of fact, as amended, and conclusion of law as follows:

12 5. *Findings of Fact, as Amended, and Conclusion of Law.*

Filed March 6, 1911.

WILLIAM STEWART MACLEOD, as Sole Surviving Partner of the Partnership of Macleod & Co.,

v.

THE UNITED STATES.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

At and prior to the dates hereinafter mentioned, petitioner and Neil Macleod and Henry Anthony Macleod were in partnership under the firm name of Macleod & Co., doing a general mercantile business in the Philippine Islands and in other parts of the Orient, with their head office at Manila, P. I., where they also transacted such business. All the members of the firm were citizens and subjects, and petitioner still is a citizen and subject, of Great Britain, but he resides at Manila, P. I., and has so resided for several years prior to the dates hereinafter mentioned. Neil Macleod and Henry Anthony Macleod have deceased and petitioner is the only survivor of such partnership.

II.

On the 13th of January, 1899, the claimant firm chartered at Manila from her owners, the Compania Maritima, the steamship Venus, an American registered vessel flying the American flag, and

cleared her in ballast to Saigon, China, from whence she sailed on the 22d of January, 1899, with a cargo of 14,500 piculs of rice of 134 pounds per picul, consigned to the claimant firm at the port of Cebu, island of Cebu, in the Philippine Archipelago.

Said steamship carried the following certificate from the United States commercial agent at Saigon:

CONSULAR SERVICE, U. S. A.

I hereby certify that the steamer Venus was cleared from this consulate on the 22nd January, 1899, for the Philippines with a cargo of rice and her papers in order.

Saigon, 10th November, 1905.

[SEAL.]

L. STANG,
U. S. Commercial Agent.

III.

Previous to the above dates it had been the practice of the military authorities at Manila to require resident importers at that port shipping rice to points other than Manila in the Philippine Islands not actually occupied by the military forces of the United States to present certified manifests covering such cargo and to pay the duties thereon to the United States military collector of customs at Manila, which practice was matter of common knowledge and discussion among the business men of Manila; but aside from this there is no evidence charging the claimant with knowledge of this fact.

13 IV.

On or about the 18th of January, 1899, said military collector of customs at Manila was informed by certain business interests of that city that the claimant firm proposed to ship said cargo of rice by the Venus direct from Saigon, China, to the port of Cebu, and did not intend to enter said cargo or to pay duty thereon at Manila. The collector was further informed that said business interests were likewise engaged in the importation of rice into the Philippine Islands, and that they had, in carrying on such business, complied with the requirements imposed by the United States authorities, and had paid duties upon similar cargoes at Manila, and that under such unfair competition they would be unable to carry on further trade.

On the same date the collector of customs at Manila inquired of the United States consul at Saigon, by cable, as to the facts thus reported (Copy A, p. 68), and on January 21, 1899, received a cable reply from said consul confirming said report and informing him that the Venus would sail for Cebu upon the following day.

V.

On January 23, 1899, the claimant firm was officially notified by said military collector at Manila that he had been informed of the sailing of the Venus direct to the port of Cebu with said cargo, and that a certified manifest of said cargo must be presented and the duties paid thereon at the custom-house at Manila.

VI.

On January 24, 1899, the following letter was presented to said collector of customs at Manila by Henry A. Macleod, a member of the claimant firm, since deceased.

MANILA, *January* 24, 1899.

Col. G. R. Colton, Collector of Customs (Present).

DEAR SIR: As your letter of yesterday to the Maritima re Venus duties concerns us they have handed it to us for reply. There was no secret made of the voyage of the Venus. She was openly dispatched for Saigon, there to load a cargo of rice for the Philippines.

Before leaving Manila we instructed the captain to furnish himself with U. S. consular papers if ordered to Cebu (orders being sent by cable) in case that port should be in possession of the U. S. authorities on his arrival. We presume, therefore, that his papers are in order to cover this point.

According to our last advice Cebu is in the hands of the republican government and there are no American authorities there. We feel certain that the Cebu authorities will exact the payment of duties on the Venus cargo of rice, and we are informed that it will be exactly the same amount as if collected under the Manila tariff at present ruling.

In selling the cargo we had, in fact, to give a guaranty to the buyer that the duty would not exceed that of the present Manila tariff. Now, if the duty be exacted by the Cebu authorities, we cannot afford to pay it for a second time to you in Manila, and for our own
14 protection must protest against so doing, since it is through no fault of ours that the duty goes to the Cebu custom-house.

As our desire, however, is to pay all the respect we possibly can to your notification, we will, if you so instruct us, request our Cebu friends to protest against the payment of any duty in Cebu in view of the Cebu customs being at present under your control, according to your text under reply.

Regretting the present political situation which presents us with this complicated case, we remain, dear sir,

Yours, faithfully,

(Signed) MACLEOD & CO.

VII.

At the time of personally presenting the above letter Macleod informed said collector that a ship of the claimant firm was about to leave Manila for Cebu and would reach Cebu in time to head off the Venus before discharging; that his intention in so advising the collector was that the collector might take such steps as he thought most expedient in the interest of the Government, but that the claimant firm had no intention of deviating the Venus from her course or stopping the discharge of her cargo unless ordered by the United States authorities so to do; and that it was the claimant firm's intention to carry out their contract with the buyers of the cargo at Cebu even at the loss involved in the payment of double duties.

The ship thus referred to sailed from Manila the same day and arrived at Cebu before the Venus reached that port.

VIII.

On the 25th of April, 1898, by an act of Congress (30 Stats., 364) war was declared between the United States and Spain.

Immediately thereafter war was waged by the contending powers, and among the early results thereof was the capture of Manila Bay and harbor, May 1, 1898, and the destruction or capture of the Spanish fleet by the forces of the United States.

Pursuant to the power vested in him by the Constitution and the said declaration of war, the President promulgated the following order:

WAR DEPARTMENT, WASHINGTON, *July* 13, 1898.

The following order of the President is published for the information and guidance of all concerned:

"EXECUTIVE MANSION, *July* 12, 1898.

"By virtue of the authority vested in me as Commander-in-Chief of the Army and Navy of the United States of America, I do hereby order and direct that upon the occupation and possession of any ports and places in the Philippine Islands by the forces of the United States the following tariff of duties and taxes, to be levied and collected as a military contribution, and regulations for the administration thereof, shall take effect and be in force in the ports and places so occupied.

"Questions arising under said tariff and regulations shall be decided by the general in command of the United States forces in those islands.

15 "Necessary and authorized expenses for the administration of said tariff and regulations shall be paid from the collections thereunder.

"Accurate accounts of collections and expenditures shall be kept and rendered to the Secretary of War.

"WILLIAM McKINLEY."

Upon the occupation of any ports or places in the Philippine Islands by the forces of the United States the foregoing order shall be proclaimed and enforced.

R. A. ALGER,
Secretary of War.

Article III of the protocol of August 12, 1898, between the United States and Spain is as follows:

"The United States shall occupy and hold the city, bay, and harbor of Manila pending the conclusion of a treaty which shall determine the control, disposition, and government of the Philippines."

Manila was opened to commerce as a port of entry August 20, 1898, and Iloilo was opened February 22, 1899; Cebu, March 14, 1899; Zamboanga, Siassi, and Jollo, December 26, 1899.

The executive order of July 12, 1898 was not proclaimed in Cebu until on or subsequent to February 22, 1899.

IX.

The treaty of peace between the United States and the Kingdom of Spain was signed on the 10th of December, 1898, but it was not ratified and proclaimed by the two countries until the 11th of April, 1899.

On the 25th of December, 1898, the Spanish flag was hauled down and the Spanish forces, civil and military, evacuated the island of Cebu, having first appointed a provisional governor thereof. Forty-eight hours later a so-called republic under the name and style of the República de Filipina, of which Aguinaldo was the head, composed of the native inhabitants, who had formerly been in insurrection against the Government of Spain, took possession of said island and proceeded to administer the public affairs thereof, and maintained a government at Cebu, including the collection of customs, until the 22d of February following, when possession was surrendered to the United States.

For many years prior to December 25, 1898, the Kingdom of Spain had possessed and governed the island of Cebu and had maintained armed forces there for defense and the preservation of order.

At no time between the date of the declaration of war between the United States and the Kingdom of Spain and the 22d day of February, 1899, had an officer of the United States, either civil or military, or any armed force of the United States, been in the island of Cebu, nor had the United States been in possession or occupation of the port of Cebu or any part of the island of that name; on the contrary, from the time of the declaration of war between the United States and the Kingdom of Spain to the 22d day of February, 1899, the Spaniards and the people of the island of Cebu successively had been in the actual physical possession of the island.

X.

The Venus arrived at the port of Cebu on the 29th of January, 1899, and the officers of said native government demanded payment of duties on her cargo from the resident agent of the claimant firm in the sum of 11,045 pesos and 50 cents, refusing to allow said cargo to be discharged until said payment was made.

16 Six days later, on February 4, 1899, said resident agent of the claimant firm at the port of Cebu paid the full amount of duties thus demanded under protest to the said native government, and said cargo was thereafter discharged from the Venus and subsequently delivered to the purchaser thereof at the port of Cebu.

XI.

The Venus thereafter took on new cargo and sailed for Manila, arriving at the latter port on February 12, 1899, consigned to the Compañía Marítima.

On the arrival of the Venus at Manila she was at first held and prevented by the American authorities from discharging her cargo witout first paying the duties upon the Saigon cargo discharged at Cebu, but very shortly thereafter was permitted to do so without such condition.

XII.

March 4, 1899, the claimant firm made application to the collector of customs at Manila to "open register to allow of steamship Knivsberg receiving a cargo for Hong Kong," but the collector of customs at Manila refused to receive further business from the claimant firm until the duties upon the Saigon cargo, discharged at Cebu, should be paid.

On account of the refusal, as aforesaid, and in order that claimant might transact further business with the United States collector of customs at Manila, claimant on March 6, 1899, paid involuntarily and under protest to said collector of customs, as duties on the cargo of rice heretofore shown to have been imported by claimant into the Island of Cebu, in Mexican currency, the value whereof in United States currency was $5,522.75, duties in the same amount having been paid to the native government as aforesaid. On March 18, 1899, claimant paid involuntarily and under protest to the United States collector of customs at Manila and pursuant to his demand further duties upon said cargo of rice in Mexican currency, the value whereof in United States currency was $56.14, making a total payment to said collector of customs of $5,578.89.

Conclusion of Law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimants are not entitled to recover, and their petition is therefore dismissed.

BY THE COURT.

17 6. *Opinion of the Court.*

BARNEY, *J.*, delivered the opinion of the court.

This is a suit by the plaintiffs to recover $5,578.89, the amount of certain import duties collected from them by the United States military collector of customs at Manila upon a cargo of rice shipped from Saigon, China, to the island of Cebu, Philippine Islands, in January, 1899, after the signing of the treaty of peace between Spain and the United States, but before its ratification. The plaintiffs are subjects of Great Britain, and at the time stated were importers of general merchandise in the Philippine Islands and other ports of the Orient, with headquarters at Manila.

The cargo was shipped upon the Venus, an American vessel flying the American flag, direct from Saigon, China, to the port of Cebu, consigned to the plaintiff firm, and arrived on the 29th day of January, 1899. On the 25th day of December previous the Spanish

military forces evacuated the island of Cebu, the officers of the civil government leaving at the same time. Within forty-eight hours thereafter the native inhabitants organized a government for the island, the same being a branch of the so-called Philippine republic, of which Aguinaldo was the head. This government continued to administer the civil affairs of the island, including the collection of customs, until the 22d of February following, when possession was delivered to the United States. Upon the arrival of the Venus at the port of Cebu, duties upon the cargo were demanded of the plaintiffs by this provisional government, refusing to allow the same to be landed until the duties were paid. In compliance with said demand, but under protest, the plaintiffs paid duties on said cargo in the sum of $5,578.89.

Thereafter the military collector of customs at Manila demanded of the plaintiffs payment to him of the customary duties levied by the military authorities in the Philippine Islands upon the said cargo landed at Cebu, and refused them permission to do further business at the custom-house at Manila until said duties were paid. The claimants thereupon paid the said collector, under protest, the duties thus demanded, which were the same in amount as had previously been paid to the provisional government at Cebu when the cargo was discharged.

It is contended by the defendants (1) that the collection of the duties in question at Manila was a valid and lawful exercise of the war power vested in the military commander of the United States forces in the Philippine Islands; (2) that, even if otherwise, the collection of said duties was fully ratified and confirmed by the act of Congress approved June 30, 1906 (34 Stat., 636), commonly known as the Spooner Act. Both of these contentions are disputed by the plaintiffs.

The rule of international law seems to be well settled that between the high contracting parties the exchange of ratifications has a retroactive effect, confirming the treaty from its date. But a different rule prevails where individual rights of third parties are affected, and as to them it is not considered as concluded until there has been an exchange of ratifications. (Haver v. Yaker, 9 Wall., 32.) As was said by Mr. Justice Brown in Dooley v. United States (182 U. S., 222, 230):

"While it is true that the treaty of peace was signed December 10, 1898, it did not take effect upon individual rights until there was an exchange of ratifications."

Under the foregoing rules, as between the high contracting parties, the title of the United States to the island of Cebu vested on the 10th day of December, 1898, the date of the treaty of Paris, but in so far as this question of title affects third parties, the title did not vest until the 11th day of April, 1899, the date of the ratification of the treaty. From the foregoing rule it would appear that technically a state of war existed between the United States and Spain until the 11th of April, 1899, in so far as that relation would affect third parties; and this notwithstanding the protocol of August 12, 1898, the only effect of which was to suspend active hostilities until a

treaty was concluded. In view of this fact, we do not see that it makes any difference in the decision of this case whether we consider the island of Cebu as belonging to the United States or as belonging to Spain at the time of the importation of the merchandize by the claimants. If Spanish territory, then the claimants who, though British subjects, were doing business at Manila, a port within the military jurisdiction of the United States, were trading with
18 belligerents of the United States, which is forbidden by the rules of international law. (Wheaton's International Law, 422; Montgomery v. United States, 15 Wall., 395.)

Doubtless the military authorities of the United States could grant permission so to trade, and it seems had done so in this case. But they had granted this privilege upon the condition that the duties upon importations into the different ports of the Philippine Islands must be paid at Manila. This condition the claimants failed to comply with in the first instance, and the exaction of these duties at a later date was well within the authority of the military commander at Manila.

As to the duties and obligations of the claimants while doing business at Manila under the American flag, it hardly needs citation of authorities to the effect that for the time being they owed allegiance to the military authorities of the United States at that place. Any lawful regulation imposed by the collector of that port was as binding upon them as though they had been native-born citizens. (Taylor's International Law, 467; Carlisle v. United States, 16 Wall., 147.)

It is true that Cebu was not then in the actual "occupation and possession" of the United States as prescribed by the executive order of July 13, 1898, but Manila was so occupied and possessed; and trade elsewhere by American citizens or aliens doing business at Manila and under the American flag was forbidden except upon the condition that Manila should be considered the port of entry for the payment of duties upon importations. For the purpose of exacting this condition all of the ports of the Philippine Islands were occupied and possessed by the military authorities of the United States.

It was said by the military board at Manila, to which this matter was referred, that the remedy of the United States on account of this infraction of trade was the confiscation of the Venus and her cargo, and not the collection of duties. We do not think so. It does not appear from the findings that there was any secrecy about this transaction. This regulation as to the payment of duties at Manila was a matter of common knowledge among those doing business there. Before the arrival of the Venus at Cebu the claimants had an interview with the military collector of customs at Manila in which the payment of duties on this importation was discussed, and at which time the claimants themselves suggested the interruption of the Venus before its arrival at Cebu, that the collector might thereby take such steps as he thought most expedient in the interest of the government. If in connection with this fact we take into consideration the letter of claimants to the collector of customs

under date of January 24, 1899 (set forth in Finding VI), the next day after this interview, in which they say that they will request their Cebu friends "to protest against the payment of any duty in Cebu in view of the Cebu customs being under your control," it may well be presumed that the claimants were not willfully violating the regulations of the collector at Manila and expected to pay their duties there if required so to do.

If we take the other view of this controversy, that the island of Cebu was American territory at the time of the importation of the merchandise, the case of the claimants is certainly no better. In that event our possession and occupation of the Philippine
19 Islands was no less a mere military occupation, subject to such rules and regulations as the military authorities might prescribe, one of which was the one already mentioned, that all duties should be paid at the port of Manila. If the claimants were willfully disobeying these regulations and were secretly trading with rebellious subjects of the country under whose flag they were doing business, they certainly have no cause for complaint when only penalized by being called upon to pay the prescribed duties. If the more lenient view is taken as above, then they were only somewhat reluctantly obeying a lawful regulation.

Much reliance is placed by the claimants upon the case of Rice v. United States (4 Wheat., 246). In that case it appeared that Castine, Me., was captured by the British forces September 1, 1814, and remained in possession of the enemy until after the ratification of the treaty of peace February, 1815. During that period the British Government exercised all civil and military authority at that place, including the collections of customs upon importations. Upon the reestablishment of American authority there, the collector of customs claimed the right to collect American duties upon goods which had already paid duties to the British military government above mentioned, but this right was denied by the Supreme Court in that case. There was nothing in that case analogous to the case at bar. Although the report of the case does not show who the importer was who had paid these duties to the British authorities, he was doubtless a citizen of Castine, who for the time being was subject to such laws and regulations as the military power there might prescribe; or, perhaps, a citizen of Great Britain or some neutral power who was carrying on a lawful trade with the inhabitants of Castine. Certainly it could not have been an American citizen, or an alien doing business at another American port, carrying in merchandise to Castine under an American flag.

If there was any doubt about the authority of the military collector of customs at Manila to collect duties upon importations at other ports, though in the actual possession of a temporary authority, the act of June 30, 1906 (34 Stat., 636), as construed by the Supreme Court in Heinszen v. United States (206 U. S., 370), ratified this collection. In that case Mr. Justice White, speaking for the court, said:

"That where an agent, without precedent authority, has exercised

in the name of a principal power which the principal had the capacity to bestow, the principal may ratify and affirm the unauthorized act, and thus retroactively give it validity when rights of third persons have not intervened, is so elementary as to need but statement." (Id., 382.)

There can be no doubt of the authority of this Government at that time to prescribe such conditions as it saw fit upon trade under its own flag with the different ports in the Philippine Islands. Its agent prescribed the conditions mentioned under which the duties in question were paid, and if we admit, as we do not, that he exceeded his authority in so doing, they were subsequently ratified and affirmed.

Judgment will be entered dismissing the petition.

Howry, J., was not present at the trial of this case and took no part in its decision.

20 7. *Final Judgment of the Court. Filed March* 6, 1911.

No. 27196.

WILLIAM STEWART MACLEOD, as Sole Surviving Partner of the Partnership of Macleod & Co.,

vs.

THE UNITED STATES.

At a Court of Claims held in the City of Washington on the sixth day of March, 1911, the findings of fact were amended by adding to Finding III the following words "but aside from this there is no evidence charging the claimant with knowledge of this fact."

The Court on due consideration of the premises found for the defendants and on May 2, 1910, ordered, adjudged and decreed that the petition of the claimant, William Stewart Macleod as sole surviving partner of the partnership of Macleod & Company, be and the same was dismissed.

BY THE COURT.

21 8. *Application for, and Allowance of, Appeal.*

No. 27196.

WILLIAM STEWART MACLEOD, as Sole Surviving Partner of the Partnership of Macleod & Co.,
vs.
THE UNITED STATES.

Application for Appeal.

The claimant makes application for an appeal to the Supreme Court of the United States in the above entitled case.

BARRY MOHUN,
DUDLEY & MICHENER,
Attorneys for Claimants.

Filed March 8, 1911.

Ordered:
That the above appeal be allowed as prayed for.

BY THE COURT.

March 8, 1911.

22 In the Court of Claims.

No. 27196.

WILLIAM STEWART MACLEOD, as Sole Surviving Partner of the Partnership of Macleod and Company,
vs.
THE UNITED STATES.

I, John Randolph, Assistant Clerk of the Court of Claims, hereby certify that the foregoing are true transcripts of pleadings in the above-entitled cause, of the findings of fact as amended and conclusion of law, filed by the Court, of the Opinion of the Court, of the final jud-ment of the Court, of the Opinion of the Court, of and allowance of appeal to the Supreme Court of the United States.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court of Claims this 27th day of March, A. D. 1911.

[Seal Court of Claims.]

JOHN RANDOLPH,
Ass't Clerk, Court of Claims.

Endorsed on cover: File No. 22,596. Court of Claims. Term No. 975. William Stewart Macleod, as sole surviving partner of the partnership of Macleod & Co., appellant, vs. The United States. Filed March 28, 1911. File No. 22,596.

FILED
APR 1 1913
JAMES H. MCKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1912.

No. 259.

WILLIAM STEWART MACLEOD, as Sole Surviving Partner of the Partnership of Macleod & Co., *Appellant,*

VS.

THE UNITED STATES.

Appeal from the Court of Claims.

Appellant's Brief.

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SUBJECT INDEX.

	Record
Petition	1
Findings of Fact	6
Opinion of the Court	11
Judgment	15
Allowance of Appeal	16

	Brief
Outline of Record	1
Statement of the Case	2
Chronology	4
Geography and History	5
Assignment of Errors	6
1. Nature of Action—Jurisdiction	6
2. When did title to Island of Cebu vest as affecting rights of third parties?	6
3. What were the Individual rights until occupancy of Cebu?	7
4. The Executive Order of July 12, 1898	11
5. The temporary allegiance owed by appellant	23
6. The Ratification Act of June 30, 1906	26
7. Protest and Duress	38

Cases Cited.

American Net & Twine Co. v. Worthington, 141 U. S., 468	19, 32
Armstrong v. United States, 182 U. S., 243	6
Baldy v. Hunter, 171 U. S., 393	10
Chew Heong v. United States, 112 U. S., 536	34, 36
Coleman v. Tennessee, 97 U. S., 536	9
De Lima v. Bidwell, 182 U. S., 1	10, 15, 39

Dooley v. United States, 182 U. S., 222.....6, 7, 23
Downes v. Bidwell, 182 U. S., 244.....10, 39
Ford v. Surget, 97 U. S., 612..... 10
The Grapeshot, 9 Wall., 129..... 16
Hamilton v. Dillin, 21 Wall., 73..... 23
Hartranft v. Wiegmann, 121 U. S., 609.....19, 32
Haver v. Yaker, 9 Wall., 32..... 7
Hawley v. Diller, 178 U. S., 476..... 18
Heinszen v. United States, 206 U. S., 370 .....26, 28, 37
Hilton v. Guyot, 159 U. S., 113..... 32
Kepner v. United States, 195 U. S., 100..... 18
Levy v. Stewart, 11 Wall., 244..... 16
Lincoln v. United States, 197 U. S., 419.....14, 25
The Mary, 1 Gallison, 206..... 17
Matthews v. McStea, 91 U. S., 9..... 23
Maxwell v. Griswold, 10 How., 242..... 39
Murray v. Schooner Charming Betsy, 2 Cranch, 64 32
The Paquete Habana, 175 U. S., 677..... 32
Pearcy v. Stranahan, 205 U. S., 257..... 10
Prize Cases, 2 Black, 635..... 23
Raditch v. Hutchins, 95 U. S., 210..... 39
The Reform, 3 Wall., 617..... 16
Robertson v. Frank, 132 U. S., 17..... 40
Swift Co., v. United States, 111 U. S., 22..... 39
Tillson v. United States, 100 U. S., 43.....28, 29
United States v. Kirby, 7 Wall., 482..... 30
United States v. Lee Yen Tai, 185 U. S., 213..... 34
United States v. Rice, 4 Wheaton., 246.. 8, 10, 20, 21, 24, 34
United States v. Vowell, 5 Cranch., 368..... 18
The Venice, 2 Wall., 259.....16, 34

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1912.

No. 259.

WILLIAM STEWART MACLEOD, as Sole Surviving Partner of the Partnership of Macleod & Co., *Appellant,*

VS.

THE UNITED STATES.

BRIEF FOR APPELLANT.

Outline of Record.

The action grows out of the enforced collection of moneys as "duties" by the officials of the United States in Manila, in March, 1899, on account of the shipment of a cargo of rice by appellant's firm from Saigon, China, to Cebu, Philippine Islands, where it arrived January 27, 1899. Neither the city nor the island of Cebu had then come under the occupation and possession of the United States in any way. The city of Cebu did not come into the occupation and possession of the United States until February 22, 1899, and the port of Cebu was not opened to commerce by the United States until March 14, 1899. Petition, Rec. 1-5; Findings of Fact, Rec. 6-11.

The court below adjudged that the claimant was not entitled to recover, and that the petition should be and was dismissed. (Rec. 11.) The appellant applied for an appeal to this court and it was allowed. (Rec. 16.)

The case is reported in 45 C. Cls., 339.

Statement of the Case.

The findings of fact (Rec. 6-11) set forth the facts in detail. We think the following to be a fair summary of the essential facts:

1. During the war with Spain, President McKinley, July 12, 1898, made an executive order (Rec. 9), directing that, "upon the occupation and possession of any ports or places in the Philippine Islands by the forces of the United States," certain tariff duties should be "levied and collected as a military contribution," and on the following day the Secretary of War promulgated such executive order and directed that it should be "proclaimed and enforced" "upon the occupation of any ports or places in the Philippine Islands by the forces of the United States." (Rec. 9.)

2. Appellant's firm had long been engaged in commerce throughout the Orient, with a head office at Manila. (Rec. 6.)

3. The firm, in January, 1899, chartered the ship "Venus," she being an American registered vessel flying the American flag, and sent her in ballast from Manila to Saigon, China, whence she sailed, January 22, 1899, to the port of Cebu, Island of Cebu, in the Philippines, with a cargo of rice consigned to appellant's firm. (Rec. 6, 7.)

4. On the arrival of the cargo of rice at the port of

Cebu, January 29, 1899, the government then existing there demanded and required the payment of duties by appellant's firm before delivery of the cargo, and such payment of duties was made under written protest on February 4, 1899, in the amount of $5,522.75. (Rec. 10.)

5. The Spaniards had evacuated Cebu December 25, 1898, and immediately thereafter the people of the Island, in the name of the Republica de Filipina, took possession of the Island and administered its public affairs, maintaining a government at the port of Cebu, including the collection of customs, until February 22, 1899, when possession was surrendered by them to the United States. (Rec. 10.)

6. At no time from the date of the declaration of war between the United States and Spain to February 22, 1899, had an officer of the United States, either civil or military, or any armed force of the United States, been in the island of Cebu, nor had the United States been in possession or occupation of the port of Cebu or any part of the island of that name. From the time of the declaration of war between Spain and the United States to February 22, 1899, the Spaniards and the people of the island of Cebu successively had been in the actual physical possession of the island. (Rec. 10.)

7. After the delivery of the cargo of rice at Cebu, the "Venus" took on a new cargo consigned to its owner, the Compania Maritimi, and sailed for Manila, where it arrived February 12, 1899. The United States authorities at Manila demanded payment there of duties on the cargo of rice delivered at Cebu and refused to allow appellant's firm to transact business with the United

States until such duties had been paid. (Rec. 10, 11.)

8. Thereupon appellant's firm paid, involuntarily and under written protest, to the United States Military Collector of Customs at Manila as duties upon the importation into Cebu, the sum of $5,578.89 being $56.14 in excess of the sum that had been previously paid as duties upon said cargo at Cebu. (Rec. 11.)

9. Manila was opened as a port of commerce by the United States August 20, 1898, and Cebu was opened March 14, 1899. (Rec. 9.)

Chronology.

The following chronological statement may be of assistance in the examination of the case:

April 25, 1898. War declared by Congress. (Rec. 9.)

July 12, 1898. Executive order promulgating military tariff. (Rec. 9.)

August 12, 1898. Protocol signed. (Rec. 9.)

August 20, 1898. Manila opened to commerce by United States. (Rec. 9.)

December 10, 1898. Treaty of peace signed. (Rec. 10.)

December 25, 1898. Spanish forces evacuated Cebu. (Rec. 10.)

January 22, 1899. "Venus" sailed from Saigon for Cebu. (Rec. 7.)

January 29, 1899. "Venus" arrived at Cebu with her cargo. (Rec. 10.)

February 4, 1899. Petitioner paid under protest to the officers of the Philippine Republic at Cebu, customs duties of 11,045.50 pesos. ($5,522.75.) Cargo was then delivered. (Rec. 10.)

February 12, 1899. The "Venus" reached

Manila with a new cargo consigned to her owners. (Rec. 10, 11.)

February 22, 1899. United States took possession of Cebu and proclaimed the executive order of July 12, 1898. (Rec. 10.)

March 4, 1899. United States officials in Manila demanded payment of duties from petitioner upon importation into Cebu. (Rec. 7, 11.)

March 6, 1899. Payment of duties made in Manila under protest of 11,045.50 pesos . . ($5,522.75). Same amount as paid in Cebu and on same cargo. (Rec. 11.)

March 14, 1899. Cebu opened to commerce by United States. (Rec. 9.)

March 18, 1899. Payment of duties made in Manila of 112.28 pesos ($56.14). Thus making total of $5,578.89 paid in Manila. (Rec. 11.)

April 11, 1899. Treaty ratified. (Rec. 10.)

Geography and History.

The facts set forth in the findings are to be considered in the light of geographical conditions and historical knowledge.

Cebu is about four hundred miles southeast of Manila. Ency. Brit.

The city of Cebu is situated about midway of the east coast of the island, and the latter is practically co-extensive with the province of Cebu, of which the city is the capital. The province has the largest population in the archipelago and is one of the most thickly inhabited. The present population of the city is about 65,000. (The Philippines: The Land of Palm and Pine, pp. 140, 141. Pub. Jan. 4, 1912. Official.) The population of the island was 403,296 in 1877. Sawyer, Inhabitants of the Philippines, pp. 9, 10.

Cebu is reached now from Manila by steamers of the first class leaving Manila every Wednesday at 4 P. M. and arriving Cebu at day break Friday. The Philippines: The Land of Palm and Pine, p. 140.

Saigon is in Cochin-China, or French Indo-China, and is about 17 degrees west of Cebu, both cities being about 11 degrees north of the equator.

Assignment of Errors.

The court below erred as follows:

1. In adjudging that the petition be dismissed.

2. In not rendering judgment in favor of the claimant for $5,578.89.

THE ARGUMENT.

I.

Nature of Action—Jurisdiction.

The court below had jurisdiction of this action because it is one to recover back money illegally exacted under compulsion.

The question of jurisdiction is settled in favor of appellant in *Dooley v. United States,* 182 U. S., 222, 223-230, and *Armstrong v. United States,* 182 U. S., 243.

II.

When Did Title to Island of Cebu Vest as Affecting Rights of Third Parties?

As to third parties, or as to individual rights, the title to the Island of Cebu did not vest until the exchange of

ratifications by the signatory parties, April 11, 1899.

That rule of law is laid down in *Dooley v. United States*, 182 U. S., 222, 230, on the authority of *Haver v. Yaker*, 9 Wall., 32, where the doctrine and the reasons supporting it are clearly stated by Mr. Justice Davis.

III.

What were the Individual Rights Until Occupancy of Cebu?

1. *It follows from the rule before stated that all rights to do business in the port of Cebu remained intact until its occupancy and possession by the United States, February 22, 1899, which rights necessarily included the right to import and sell rice, which is not a contraband of war, it being classed as food or provision.*

That is the well established rule of law.

Wheaton's International Law (3rd edition), pp. 640-642, 654;

7 Moore's Digest of International Law, pp. 675-692, especially 683, 684;

Hall's International Law (4th edition), pp. 687, 689.

2. *Hostilities ceased on the signing of the protocol, August 12, 1898.*

Article VI of that document is as follows:

> Upon the conclusion and signing of this protocol, hostilities between the two countries shall be suspended, and notice to that effect shall be given as soon as possible by each government to the commanders of its military and naval forces.
>
> 30 Stat., 1743.

The cessation of hostilities upon the signing of the protocol took the form of absolute peace on the signing of the treaty by the United States and Spain, December 10, 1898.

30 Stat., 1754.

The opening sentence of the treaty, as well as of President McKinley's proclamation, puts that question beyond doubt.

The Spaniards abandoned possession of Cebu December 25, 1898, and the inhabitants of that populous city and island immediately organized a government which they maintained, collecting customs duties on imports through their customs officials. (Rec. 10, Finding IX.) That condition remained until the United States appeared at the port for the first time, February 22, 1899, when the government that had been organized by the people of Cebu promptly surrendered. (*Ibid.*)

It follows that Cebu was not hostile territory when the ship reached the port of Cebu, nor when the payment of duties was made there under duress and protest, and that the government then existing at that port was *de facto*, at least.

3. *In that condition of things, the payment of duties by appellant's firm to the de facto government then in possession of the port of Cebu was lawful in all things, first, because the cargo of rice was not contraband of war, as we have seen, and, second, because the duties were paid involuntarily to an existing government.*

The facts found bring this case within the doctrine of *United States v. Rice*, 4 Wheaton, 246, 253-255. There Castine, Maine, in the war of 1812-15, between the United States and Great Britain, had been captured by

the enemy and remained in his exclusive possession, under the command and control of his military and naval forces, until after the ratification of the treaty of peace in February, 1815. During that period the British government exercised all civil and military authority over the place, established a custom house, admitted goods to be imported and collected duties. On the re-establishment of the government of the United States in Castine, the collector of customs, claiming a right to duties on the goods for the United States, took the bond in that case for the security or payment of the duties and entered suit thereon. The opinion of the court was written by Mr. Justice Story, who held that as Castine during the period named was in possession of the enemy, the laws of the United States could not be rightfully enforced there, and that goods imported into it were subject to such duties only as the British government chose to require. In the course of the opinion, Mr. Justice Story said:

> Such goods were, in no correct sense, imported into the United States. The subsequent evacuation by the enemy, and resumption of authority by the United States, did not, and could not, change the character of the previous transactions.

For a fuller statement of the facts see the original edition of 4th Wheaton, where the plea is set forth at length.

The case of *United States v. Rice* has been cited, approved, and followed in numerous cases, among them are—

Coleman v. Tennessee, 97 U. S., 536;

Ford v. Surget, 97 U. S., 612;
Baldy v. Hunter, 171 U. S., 393;
De Lima v. Bidwell, 182 U. S., 1, 184;
Downes v. Bidwell, 182 U. S., 303 (concurring opinion);
Pearcy v. Stranahan, 205 U. S., 257, 272.

The facts in the *Rice case* were not as strong against the United States as in the case at bar. There Castine had been in the possession of the United States formerly, and the possession by the British was but temporary. In the case at bar the sovereignty of the United States was first extended to Cebu by the treaty of peace with Spain, which took effect April 11, 1899, as to third parties, occupancy of the port never being had until February 22, 1899.

4. *The doctrine of the Rice case has been applied and enforced more than once by the United States in the international way.*

(a) In 1873, the British government applied to the United States for its good offices towards preventing the exaction by the Mexican government of duties imported at Mazatlan, which duties had been paid previously to insurgents there. Mr. Fish, our Secretary of State, wrote Mr. Nelson, our Minister to Mexico, directing him to take the course requested by the British Minister. The instructions of Mr. Fish are printed in 1 Wharton's International Law Digest, Sec. 7, pages 29 and 30, and they state that the principle that duties once paid in a part of the territory of the country in possession of an enemy are not liable again to be paid when the enemy is expelled or withdraws, was solemnly decided by the Supreme Court of the United States in the case of Rice, 4 Wheaton, page 246.

(b) The subject of *de facto* governments is treated at length and with copious citations in 1 Moore's Digest Int. Law, pp. 41, *et seq.* The *Bluefields' case*, which is both interesting and instructive here, is fully presented on pages 49-51 of that work. There, by diplomatic negotiations and by claiming the application of the rules of law for which we are here contending, this government prevailed on Nicaragua to recognize the validity of the payment of duties that was made to the *de facto* government headed by General Reyes, and to assent to the return to the American merchants of the second payment of such duties that had been made to Nicaragua. It is for the application of the principles thus declared by the United States that we are contending here.

We submit that it follows from all this that appellant's firm was justified in paying the duties exacted by the native authorities in Cebu, and that the United States has no right to complain because such duties were paid in a port which it did not occupy or possess at the time this business was done.

IV.

The Executive Order of July 12, 1898.

1. *It was not intended that the United States, pending the treaty, should occupy more than the city, bay, and harbor of Manila.* That proposition is clearly established by Article III of the protocol of August 12, 1898, 30 Stat., 1742. That article is as follows:

> The United States will occupy and hold the City, Bay, and Harbor of Manila, pending the

> conclusion of a treaty which shall determine the control, disposition, and government of the Philippines.

Thus we have fixed, in a most authoritative form, all the right of occupancy and possession that the United States could have until the conclusion of a treaty between the contracting powers.

2. *The order of President McKinley dated July 12, 1898, did not extend or apply to ports or places not actually occupied or possessed.*

That order directs that upon "the occupation and possession of any ports and places" in those islands, "the following tariff of duties and taxes, to be levied and collected as a military contribution, and regulations for the administration thereof, shall take effect and be in force in the ports and places so occupied." (Rec. 9, Finding VIII.)

From the time the treaty of December 10, 1898, was signed, the United States had the right, so far as the two contracting parties were concerned, to possess and occupy everything ceded to it in the Philippines by the treaty. But that right could not prevail against or operate on individual rights, as we have seen. Doubtless it was in view of these well settled principles of constitutional and international law that President McKinley ordered and directed that it was upon the *occupation and possession* of any ports that the tariff of duties and taxes should be levied and collected as a military contribution, and that such tariff should "take effect and be in force in the ports and places so occupied."

To make assurance doubly sure the Secretary of War, in promulgating that Executive Order, made this order:

> Upon the occupation of any ports or places in the Philippine Islands by the forces of the United States, the foregoing order shall be proclaimed and enforced.

The act of the Secretary was the act of the President.

We submit that it is plain that the Executive Order took effect in Cebu only upon the "occupation and possession" of that port "by the forces of the United States." That occupation did not occur until February 22, 1899, more than three weeks after the native Philippine authorities had required appellant to pay duties to them on the cargo of rice. The proclamation could not have been made or enforced there before that time, nor was any attempt made to do it. Evidently, it was the purpose of the President to have the order promulgated and enforced in the ports and places in the Philippines when and as occupied or possessed by the forces of the United States. The language is not susceptible of any other interpretation. That course was not only the usual one in emergencies of the kind, but it was the reasonable course, when we consider that our government was engaged in taking possession of ports and places in a distant part of the world, inhabited by a strange mixture of people, many of them owing fealty to other nations, and but a few of them speaking the English language. To them public proclamation would be of great force and effect, and hence it was apparent that it should be made before obedience ought to be required.

A parallel in principle is found in a "notified blockade," which is a notification accompanied by the fact of blockade. (Wharton Int. Law, 3d ed., sec. 511, 519; Hall Int. Law., 4th ed., sec. 257, 258.)

The Executive Order is broad and comprehensive, it leaves nothing to discretion, and it does not authorize the collection of duties but upon the occupation and possession of ports and places. The order could only be enforced in a port *occupied and possessed*, for the language limits its operation thus, and it could not be enlarged by interpretation so as to cover points not occupied. The maxim applies that the express mention of one thing excludes all others.

The doctrine of occupation, so clearly and tersely stated in the Executive Order, is nothing more or less than the doctrine laid down by this court in the *Rice case* and in others following it, as well as in *The Venice case*, and is that set forth in the dispatch from Secretary Fish to Minister Nelson in the Mazatlan case heretofore quoted from, but it was crystallized in Article 42, Hague Convention, in 1899, which we shall discuss later.

This court, in *Lincoln v. United States*, 197 U. S., 419, holds that the order was applicable to an importation into a port *in* the Philippines occupied by the military forces of the United States *from* another port in the islands not so occupied.

Mr. Justice Holmes, in speaking for the court, says (p. 428):

> Apart from the question of the duration of the President's order, it plainly was an order intended to deal with imports from foreign countries only and Philippine ports not in the actual military control of the United States.

In other words, had there been an importation from Cebu to Manila subsequent to the order of July 12, 1898, and prior to our occupation of Cebu, duties thereon

would have been collectible at Manila under the President's order. The contention of appellees is that the government was entitled, under that order, to collect at Manila duties upon merchandise brought into Cebu from China. This would result in a most anomalous situation. Under the rule quoted from the *Lincoln case*, Cebu would necessarily have been a foreign port in order to have justified the collection at Manila of duties upon an importation from Cebu; while under the contention of appellees Cebu would at the same time have been a domestic port in order to justify the collection at Manila of duties upon an importation into Cebu from a foreign country.

"We are unable to acquiesce in this assumption that a territory may be at the same time both foreign and domestic."

De Lima v. Bidwell, 182 U. S., 1, 199.

The order of July 12, 1898, contained an expression of principle universally recognized in international law. The rule is well expressed as follows:

> Rights which are founded upon mere force reach their natural limit at the point where the force ceases to be efficient.
>
> Hall's Int. Law (5th ed.), p. 448.

By the Act of July 13, 1861 (12 Stat., 255, Sec. 5), the President was authorized to declare that the inhabitants of a state, or any section or part thereof, where the insurrection existed, to be in a state of insurrection against the United States, and thereupon all commercial intercourse by and between the same and its citizens and the citizens of the rest of the United States should cease and be unlawful so long as hostility existed. President

Lincoln, Aug. 16, 1862 (12 Stat., 1262), issued a proclamation on the subject, but excepted therefrom the inhabitants of such States "as may maintain a legal adhesion to the Union and the Constitution, *or may be from time to time occupied and controlled by forces of the United States* engaged in the dispersion of the said insurgents." (Italics ours.)

The statute and the excepting clause of the proclamation were considered by this court in the case of *The Venice*, 2 Wall., 259, 265, 277, when it was said:

> This legislative and executive action related, indeed, mainly to trade and intercourse between the inhabitants of loyal and the inhabitants of insurgent parts of the country; but, by excepting districts occupied and controlled by national troops from the general prohibition of trade, it indicated the policy of the Government not to regard such districts as in actual insurrection, or their inhabitants as subject, in most respects, to treatment as enemies. *Military occupation and control, to work this exception, must be actual; that is to say, not illusory, not imperfect, not transient; but substantial, complete, and permanent.* Being such, it draws after it the full measure of protection to persons and property consistent with a necessary subjection to military government.

The italics are our own. That case, as to the propositions above stated, was approved in—

> *The Reform*, 3 Wall., 617, 632;
> *The Grapeshot*, 9 Wall., 129, 131;
> *Levy v. Stewart*, 11 Wall., 244, 253

Our occupation of Manila, and the presence of our armed forces there, did not establish a substantial, com-

plete, and permanent occupation of Cebu, a populous and important commercial city four hundred miles distant from Manila.

3. *The cargo of rice did not enter Manila, nor in any way come under the jurisdiction of the authorities there, nor was it discharged at a point possessed or occupied by the United States.*

(a) Duties could only be "levied and collected as a military contribution *in the ports and places*" in the Philippines that were *in the occupation and possession* of the forces of the United States, for so it was ordered and directed by President McKinley. The military power was limited; it was to be exercised only "in the ports and places so occupied." The levy and collection were to be enforced *in* such ports and places—not out of them; in *Cebu*, when so occupied or possessed—not in *Manila* on account of a Cebu transaction, either before or after the occupancy of Cebu. How was the enforcement of the order to be made in given port? By levy and collection *there*. The order is clear, precise, definite, and is to be strictly construed because in derogation of common right.

(b) Even if the "Venus" had touched at Manila while on the voyage to Cebu, there being no intent to enter the cargo at Manila, the owners would not have been chargeable with duties to the United States in any sense, the cargo being carried then to Cebu and discharged there; nor would the owners, in such circumstances, have been chargeable with duties if the cargo had been seized by the collector at Manila.

This proposition is fully established by *The Mary*, 1 Gallison, 206.

In the course of the opinion (p. 209) Mr. Justice Story said, "I am well satisfied that an importation into

the United States means not merely a bringing within our jurisdictional limits, but also a bringing into some port, harbor, or haven, *with an intent to land the goods there.*" The italics are in the opinion.

Mr. Justice Story also said:

> Upon a careful examination of the case of *United States v. Vowell, et al.*, 5 Cranch, 368, the court evidently considered that an importation into the United States did not mean an arrival within the limits of the United States, or even a collection district, but within some port, harbor, etc., with an intention there to unload the goods.

4. *The Executive Order relates to a technical subject, uses technical terms, is to be construed in favor of the individual, and according to the technical meaning and effect of the words used.*

This is the statement of a familiar rule for the construction of statutes and contracts. We submit that this rule applies to and enforces our argument as to the construction to be placed on the Executive Order.

Hawley v. Diller, 178 U. S., 476, 478.

5. *The Executive Order uses words and terms that for a long time have had a settled and well-known meaning in the law of nations, in the conduct and declarations of our executive departments, and in our judicial decisions, and it is to be presumed that such words and terms were used in that sense in the order under consideration here.*

The rule of law is clearly stated and maintained in *Kepner v. United States*, 195 U. S., 100, 124, in an opinion written by Mr. Justice Day.

The same reasoning applies, as we submit, to the use in the Executive Order of the words and terms that had long been sanctioned by our courts and executive departments, as well as by the law of nations.

6. *If there be doubt as to the meaning of the Executive Order, it should be resolved in favor of this appellant.*

When the question relates to the imposition of duties, and is one of doubt, it should be resolved in favor of the importer, for duties are never imposed on "vague or doubtful interpretations."

> *Hartranft v. Wiegmann*, 121 U. S., 609, 616;
> *Am. Net & Twine Co. v. Worthington*, 141 U. S., 468, 474.

7. *The notice to appellant's firm by the Collector at Manila that a certified manifest of the cargo of rice must be presented and duties paid thereon at the Custom House at Manila, was null and void and gave no rights to the United States as against appellant's firm.*

The findings (Rec. 7, 8) and the opinion of the court below (foot of p. 13) present the fact that, January 23, 1899, appellant's firm was officially notified by the military collector at Manila that he had been informed of the sailing of the "Venus" to the port of Cebu with the cargo of rice, and that a certified manifest of the cargo must be presented and the duties paid thereon at the Manila custom house. On the following day (Rec. 8) the firm wrote the collector an exact statement of the situation, and in the course of the letter said:

> Now, if the duty be exacted by the Cebu authorities, we cannot afford to pay it for a second

> time to you in Manila, and for our own protection must protest against so doing, since it is through no fault of ours that the duty goes to the Cebu Custom House.

Thus the issue was joined politely but firmly. We submit:

(a) The notice by the military collector that the cargo of rice would have to pay duty at Manila availed nothing. It was a "harmless thunderbolt." It was absolutely null and void because beyond the words and spirit of the Executive Order, to say nothing of the other laws of the land. The military collector had no other authority to collect "tariff duties" than such as lay within the four corners of the Executive Order. Hence, his notice was that an unlawful thing would be done by him, and therefore it did not give or establish a lawful right to do that thing. No right in favor of the government as against appellant's firm grew out of the notice given by the military collector.

As a proclamation or public notice is not of itself sufficient to constitute a legal blockade, but an actual blockade must exist (Wharton Int. Law, 3d ed., Sec. 514) so, in this matter, public notice or proclamation in and possession of Cebu must meet, unite, run together.

(b) Until there was both occupation and proclamation or notice in the port of Cebu it was to be deemed a foreign port, so far as respected our revenue laws, and goods imported into it were subject to such duties only as the government existing there chose to require. "Such goods were," to use the language of Mr. Justice Story in *United States v. Rice*, 4 Wheaton, 246, 254, "in no correct sense, imported into the United States." And, mak-

ing further reference to his argument in that case, we submit that the subsequent surrender by that government to ours, and the possession by the United States of the port of Cebu, "did not, and could not change the character of the previous transactions. The doctrines respecting the *jus postliminii* are wholly inapplicable to the case."

In the case at bar, there was no former condition to be restored to the United States, because it had never been in possession or occupancy of the port,—had never performed the functions of government there. When the United States took possession of the port, it wrought a commencement, not a restoration, but that commencement of authority and power did not touch past business transactions. "The goods were liable to American duties, when imported," said Mr. Justice Story in the case we have been quoting from, "or not at all. That they were not so liable at the time of importation, is clear from what has been already stated; and when, upon the return of peace, the jurisdiction of the United States was reassumed, *they were in the same predicament as they would have been if Castine had been a foreign territory ceded by treaty to the United States, and the goods had been previously imported there. In the latter case, there would be no pretence to say that American duties could be demanded;* and, upon principles of public or municipal law, the cases are not distinguishable. The authorities cited at the bar would, if there were any doubt, be decisive of the question. But we think it too clear to require any aid from authority." (Italics ours.)

(c) We submit that the *Rice case* is particularly sig-

nificant on this subject of notice. The notice here can only be claimed to be effective on the theory that it was equivalent to requiring the importer of the cargo of rice to enter it at Manila though imported at Cebu. The notice was met, as we have seen, with a polite but firm refusal to pay the duties except under protest. There was not even the pretense of an entry of the goods at Manila, whereas, in the *Rice case*, there was a required and demanded entry of the goods, followed by the execution of a bond for the payment of the duties. When action was brought on the bond, the defendants pleaded the importation of the goods into Castine while that port was in possession of the British, who collected the duties, and then they pleaded the required and demanded entry after the treaty of peace had been ratified, the entry being followed by the execution of the bond. There were, then, two features of the case that are not presented by the case at bar.

1. An entry of the goods at Castine on the demand and requirement of the United States collector.

2. The execution of a bond for the payment of the duties.

By these several steps the owner of the imported merchandise entered the goods and bound himself to pay the duties if they were lawfully payable. This court held that they were not lawfully payable, despite their entry and the execution of the bond. Thus it clearly appears, as we submit, that even the formal and actual entry of the goods at the custom house at Manila would not have obligated appellant's firm to pay the duties, but such payment might have been resisted successfully and according to law.

V.

THE TEMPORARY ALLEGIANCE OWED BY APPELLANT TO THE UNITED STATES AS A CONQUEROR IN POSSESSION OF MANILA DID NOT JUSTIFY THE EXACTION OF THESE MONEYS FROM HIM AS DUTIES UPON AN IMPORTATION INTO CEBU.

(a) While it may be broadly said that in time of war, within the military district of his occupation, there are no restrictions upon the power and authority of a military commander, except such as are imposed by common consent of all civilized nations, which means the restrictions of international law (*Mattheacs v. McStea*, 91 U. S., 9; *Prize Cases*, 2 Black, 635; *Hamilton v. Dillin*, 21 Wall, 73) nevertheless, in respect of duties, there are certain further restrictions. As was said by this court in *Dooley v. United States*, 182 U. S., 222, 234:

> The spirit as well as the letter of the tariff laws admit of duties being levied by a military commander only upon importations from foreign countries; and while his power is necessarily despotic, this must be understood in an administrative sense. While in legislating for a conquered country he may disregard the laws of that country, he is not wholly above the laws of his own.

The military commander in Manila, who collected these moneys "as duties," was not only restricted by the rules of international law, which require actual occupation as a prerequisite to the lawful collection of duties, but also by the laws of his own country, viz., the order of his Commander-in-Chief, dated July 12, 1908. This

order, as has been pointed out, expressly provided that it was to "be in force in the ports and places so occupied." (Rec., 9.) It is found as a fact in this case that appellant paid these monies to the military collector of customs at Manila "as duties on the cargo of rice heretofore shown to have been imported by claimant into the Island of Cebu." (Rec., 11.)

Therefore, while admitting the fullest allegiance owed by appellant, as a British resident of Manila, to the military commander in possession there, such allegiance cannot be held to justify or legalize the taking of his money as customs duties when such taking was clearly beyond the lawful authority of the commander.

While a military commander, in possession of a port or other place, may well determine that a ship, a wharf, a warehouse, or other property is necessary to him—is a military necessity—and take the same, without there arising on the part of his government a liability to pay the value of such property, yet he cannot lawfully collect, under the guise of customs duties, moneys upon a cargo which was never imported into the territory under his possession or control, or under the possession or control of his government. If such action be taken, his government cannot be permitted to maintain a defense that there might have been a lawful taking but by other methods of the same amount of money had the commander in his discretion so determined.

As was said in the case of *United States v. Rice, supra:*

> Such goods were in no correct sense imported into the United States. The subsequent evacuation by the enemy, and resumption of authority by the United States, did not and could not,

> change the character of the previous transactions.
>
> The doctrines respecting the *jus postliminii* are wholly inapplicable to this case. The goods were liable to American duties, when imported, or not at all. That they were not so liable at the time of importation is clear from what has been already stated; and when, upon the return of peace, the jurisdiction of the United States was re-assumed, they were in the same predicament they would have been if Castine had been a foreign territory ceded by treaty to the United States, and the goods had been previously imported there.

The declared beneficent objects and purposes of the United States in waging war against Spain are fresh in the minds of the court. The thought of this government, in that war, appropriating or confiscating money of a British subject in a captured port, as a military necessity, does violence to the avowed motives of our country in waging that conflict. But while we may concede the existence of the power, the record shows there was no attempt made to exercise it, and this is conclusive upon the defendant.

(b) Appellant was not, as is stated in the opinion of the court below, "trading with belligerents of the United States." Although Aguinaldo "declared hostilities" against the United States on February 4, 1899, as remarked by the court in *Lincoln v. United States*, 197 U. S., 419, 427, nevertheless this country never recognized the insurrectionists as belligerents and hence under the rules of international law, upon which the court below relies, they could not be styled "the enemy." Nor can the retention of these moneys be justified, as is attempted in the following paragraph of the opinion (Rec., 13), on the theory that the United States had granted permission

to carry on this trade. This also presupposes belligerency. The moneys were collected "as duties," not as license fees. Besides, licenses to trade are only given to carry on a commerce forbidden by the laws of war. There was no such inhibition here. In Manila, the military commander might have granted licenses in respect of trade between any port elsewhere and Manila, but here there is an attempt to legalize a collection of duties on the ground that it was a license to trade between China and Cebu,—a position manifestly untenable, we submit.

VI.

The Ratification Act of June 30, 1906.

The court below held applicable the act of June 30, 1906 (34 Stat., 636), which is copied in the *Heinszen case*, 206 U. S. p. 381. That act is as follows:

> That the tariff duties, both import and export, imposed by the authorities of the United States or of the provisional military government thereof in the Philippine Islands prior to March eight, nineteen hundred and two, at all ports and places in said island, upon all goods, wares, and merchandise imported into said islands from the United States, or from foreign countries, or exported from said islands, are hereby legalized and ratified, and the collection of all such duties prior to March eight, nineteen hundred and two, is hereby legalized and ratified and confirmed as fully to all intents and purposes as if the same had by prior act of Congress been specifically authorized and directed.

That act was held valid and applicable to tariff duties

that had been collected under the Executive Order of July 12, 1898, after the ratification of the treaty between the United States and Spain, but before the time when Congress, by Sec. 1 of the Act of March 8, 1902, had enacted tariff duties for the Philippine Islands.

By referring to the report of the case in the Court of Claims (42 C. Cls., 58, 64) it will be seen that the claimant there shipped merchandise from ports in the United States between April 11, 1899, and November 15, 1901. Upon the arrival at the port of Manila of merchandise brought from the United States, the army officers, acting pursuant to and in accordance with the Executive Order and regulations, took possession of such merchandise and placed it under military guard in the manner prescribed by the regulations, proceeded to assess and levy duties thereon at the established rate, and refused to deliver possession thereof to the claimant until the payment in cash of the duties imposed. The officers threatened, in the event of default in payment of the duties, to seize the merchandise and sell it for the payment of the duties. Thereupon the claimant was compelled to and did pay to the officers the amount of duties so assessed, but under duress.

We submit that the act referred to does not cover the case at bar, for the following reasons:

1. *The act applies to "tariff duties" imposed and collected and to nothing else.*

The act of ratification is confined by its terms to "tariff duties, both import and export, imposed by the authorities of the United States or of the provisional military government thereof in the Philippine Islands." * * * It does not legalize and ratify the mere illegal exaction of money by the authorities.

On page 382 of the opinion in the *Heinszen case*, Mr. Justice White said:

> As the text of the act of Congress is unambiguous and manifests as explicitly as can be done the purpose of Congress to ratify, the case comes to the simple question whether Congress possessed the power to ratify which it assumed to exercise.

What power to ratify did Congress assume to exercise? We answer, just the power that is described in the act and none other, namely: The ratification of the imposition of "tariff duties."

If Congress had intended that the act should cover something more than the imposition of tariff duties, appropriate language would have been used, and we invoke the rule "It would have been easy to say so." In many cases this court has rejected a proposed construction which would unwarrantably contract or expand the meaning of the Congress, upon the declared presumption that the Congress would have expressed what "it would have been easy to say" had there been such an intention. The cases are collected in 1 Fed. Stat. Ann., lxxv, lxxvi.

In *Tillson v. United States*, 100 U. S., 43, 46, this court was asked to so interpret a statute as to authorize the Court of Claims to allow interest in the rendition of a judgment. "But if Congress," said Mr. Chief Justice Waite, "had desired to grant such authority, it would have been easy to have said so in express terms; and because it did not say so, we are led irresistibly to the conclusion that it did not intend to give any such power."

If the Congress had intended the act to ratify the acts of the authorities in the circumstances presented by the

case at bar "it would have been easy to have said so in express terms," and the act would have taken some such form as the following:

> That the tariff duties, both import and export, imposed by the authorities of the United States or of the provisional military government thereof in the Philippine Islands prior to March eight, nineteen hundred and two, at all ports and places in said islands, upon all goods, wares, and merchandise imported into said islands from the United States, or from foreign countries, or exported from said islands, *and the collection by such authorities of all moneys on account of importations into ports and places therein that were not possessed or occupied by the United States at the times of such importations, even though duties had been paid thereon to de facto governments at such ports and places,* are hereby legalized and ratified, and the collection of all such duties *and moneys* prior to March eight, nineteen hundred and two, is hereby legalized and ratified and confirmed as fully to all intents and purposes as if the same had by prior act of Congress been specifically authorized and directed.

We have italicized the words that we submit would have made the act ratify and legalize the collection of the moneys here complained of had the Congress so intended, and we submit, again using the language of Mr. Chief Justice Waite in the *Tillson case*, that "because it did not say so, we are led irresistibly to the conclusion that it did not intend to give any such power."

The language of the Act of June 30, 1906, is narrow and restrictive. The term "tariff duties" is narrow and restrictive. Indeed, that term is technical and precise. Therefore the words of the act are to be given their tech-

nical meaning and effect and in favor of the appellant, as we have shown in part IV.

The Congress, in using the technical words "tariff duties, both import and export," and "the collection of all such duties," thereby limited the statute to exportations and importations on which "tariff duties" had been collected. We submit that the taking of the cargo of rice into the port of Cebu, several weeks prior to the occupancy of that port by the United States, was a transaction clearly beyond the letter and the spirit of the statute. How can the language of the act be made to cover an "importation" into a port which was not at the time and never had been either occupied or possessed by our government? How can the language of the act be made to cover an imposition and collection in *Manila* of tariff duties on an importation of goods in *Cebu*, four hundred miles away, a port then in possession of another government, and especially when that imposition and collection in *Manila* were made several weeks after the cargo had been discharged in *Cebu*, where duties were paid to the *de facto* government? We submit that to so interpret this act would be to put words in it that are not there now.

2. *The general terms of the act should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence, and it is to be presumed that the Congress intended exceptions to its language which would avoid results of this character.*

"General terms," said Mr. Justice Field, in *United States v. Kirby*, 7 Wall., 482, 486, "should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its

language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter."

In the application of that rule to the Act of June 30, 1906, we submit these propositions:

(a) To so construe the term "tariff duties" as to cover the exaction of money in the case at bar would lead to injustice and oppression by requiring appellant to do, what our own government, as we have shown in part III of this brief, has time and again condemned in the conduct of other governments, and what this court has held not to be permissible in law,—the payment of "tariff duties" to this government although a previous payment had been made to a *de facto* government. To compel this second payment of duties would put a burden upon the importer that is both unjust and oppressive.

(b) To so construe the words "upon all goods, wares, and merchandise imported into said islands from the United States, or from foreign countries," as to make them apply to the importation of rice into the port of Cebu would lead to the absurd consequence, to say nothing of injustice and oppression, of holding that Congress intended to penalize in 1906, the lawful transaction of business in Cebu, February 4, 1899,—a port four hundred miles away from the nearest armed forces of the United States, a port then in possession of a *de facto* government, and not possessed or occupied by the United States until three weeks after the importation.

(c) To avoid such results the act should be so limited in its application as to except from its operation that importation at Cebu and this payment at Manila, thus making the reason of the law prevail over its letter.

3. *If the meaning of this act, or any part of it, is one*

of doubt, it should be resolved in favor of the appellant.

It is well settled that duties are never imposed "upon vague or doubtful interpretations" of statutes, and that doubts should be resolved in favor of the importer.

> *Hartranft v. Wiegmann*, 121 U. S., 609, 614;
> *Am. Net & Twine Co. v. Worthington*, 141 U. S., 468, 474.

It necessarily follows, we submit, that, if there is doubt about the meaning of this act, it should not be made to ratify the collection of moneys from appellant's firm at Manila because of the importation of the cargo of rice at Cebu.

4. *The Act of June 30, 1906, should not be so construed as to violate the law of nations, if any other possible construction remains.*

International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination.

> *Hilton v. Guyot*, 159 U. S., 113, 163;
> *The Paquete Habana*, 175 U. S., 677, 700.

"It has also been observed," said Mr. Chief Justice Marshall, in *Murray v. Schooner Charming Betsy*, 2 Cranch, 64, 118, "that an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains, and, consequently, can never be construed to violate neutral rights, or to affect neutral commerce, further than is warranted by the law

of nations as understood in this country. These principles are believed to be correct, and they ought to be kept in view in construing the act now under consideration."

In the application of the rule thus stated, this court there held that a vessel and cargo belonging to one who, though born in the United States, was a resident in a Danish Island, and had taken an oath of allegiance to the King of Denmark, was not liable to forfeiture under the Act of February 27, 1800 (2 Stats., 7) suspending intercourse with France, for a person thus circumstanced was not under the protection of the United States. That act was as definite and precise in its language as is the act here under consideration, but this court reversed the decree of the court below whereby the claim of the owner to damages for the seizure and detention of his vessel was denied. (P. 125.)

We submit that in the absence of plain, positive, and unequivocal language embracing such collections as were made in the case at bar, this Court would not be warranted in holding that the Congress of the United States had set at defiance the rules of international law that had been advocated and enforced for a long time by our government, as well as stated repeatedly by the court in its decisions, and that the rules of international law and the language of the Executive Order are so plain and positive as to require them to be read into this act as exceptions or qualifications.

Evidently, President McKinley was well advised because, in the Executive Order of July 12, 1898, its operation was limited to such ports and places as were occupied and possessed, and in the order of the Secretary of War, made the next day, it was directed that the Executive Order "upon the occupation of any ports or places

in the Philippine Islands by the forces of the United States," * * * "shall be proclaimed and enforced." No doubt that order was drafted after a study of the *Rice case*, as well as the case of *The Venice*, 2 Wall., 259, 265, 277, and the proclamation of President Lincoln therein considered.

5. *It is not to be assumed lightly that the purpose of the Act of June 30, 1906, was to abrogate The Hague Convention of 1899, but such purpose, to be effective, must appear clearly and distinctly from the words of the statute. The statute and the convention should be so construed as to give effect to both, if by any reasonable interpretation that can be done.*

The foregoing is a brief statement of the rules laid down by this court in *United States v. Lee Yen Tai*, 185 U. S., 213, 221, 222, and cases cited, and *Chew Heong v. United States*, 112 U. S., 536, 550. In the latter case it was held that the treaty could stand with the subsequent statutes, and, consequently, it was enforced. In the former case the court applied the familiar rule of statutory construction that, in case of statutes alleged to be inconsistent with each other, in whole or in part, effect must be given to both, if by any reasonable interpretation that can be done; and that if harmony is impossible, and only in that event, the former is repealed by the latter, in part or wholly, as the case may be.

The Hague Convention of 1899, between the United States and many of the great powers of the world, dealt with "the laws and customs of war on land." (32 Stat., 1803-1826.) One if its recitals (p. 1804) is this:

> Thinking it important, with this object, to revise the laws and general customs of war, either

> with the view to defining them more precisely, or of laying down certain limits for the purpose of modifying their severity as far as possible.

In Article I (32 Stat., 1808), it is contracted that the parties shall issue instructions to their army land forces, which shall be in conformity with the "Regulations Respecting the Laws and Customs of War on Land" annexed to the Convention. Those regulations follow the Convention. (32 Stat., 1811-1825.)

Article 42 of the regulations is as follows:

> Territory is considered occupied when it is actually placed under the authority of the hostile army.
>
> The occupancy applies only to the territory where such authority is established, and in a position to assert itself.

32 Stat., 1821.

The Hague Convention was signed July 29, 1899; ratification advised by the Senate March 14, 1902; ratified by the President of the United States March 19, 1902; proclaimed by President Roosevelt April 11, 1902. The concluding sentence (p. 1825) of that proclamation is worthy of note.

> Now, therefore, be it known that I, Theodore Roosevelt, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In that way President Roosevelt not only proclaimed the convention to the public, but he issued thereby in-

structions to our army land forces in harmony with the obligation of Article I.

We submit that, when the Act of June 30, 1906, was passed, Congress could not have been disregardful of The Hague Convention, and we think to be particularly applicable here the reasoning of Mr. Justice Harlan in *Chew Heong v. United States*, 112 U. S., 536, 550.

> When the act of 1882 was passed, Congress was aware of the obligation this government had recently assumed, by solemn treaty, to accord to a certain class of Chinese laborers the privilege of going from and coming to this country at their pleasure. Did it intend, within less than a year after the ratification of the treaty, and without so declaring in unmistakable terms, to withdraw that privilege by the general words of the first and second sections of that act? Did it intend to do what would be inconsistent with the inviolable fidelity with which, according to the established rules of international law, the stipulations of treaties should be observed? These questions must receive a negative answer.

It seems inconceivable that in the passage of the Act of June 30, 1906, the Congress was either oblivious of that convention, its obligations, the pledge of good faith given by President Roosevelt in his proclamation, or deliberately passed the act in defiance of the treaty obligations of the United States. It must be that Congress in the passage of the act intended that it should be in harmony with those obligations.

b. *The history of the Ratification Act.*

The order of July 12, 1898, expressly providing it should be in force in ports in the occupation and possession of the forces of the United States, was before

Congress when the Act of June 30, 1906, was under consideration. (See *Heinszen Case*, 206 U. S., 370, 378.) The briefest consideration of the purposes sought to be accomplished by the Act negatives any intention to ratify a collection in such a case as that at bar. The history of the legislation confirms this. The bill, as originally introduced, expressly named the date of July 12, 1898 (S. 6362, 59th Congress, 1st Session) and it contained several recitals, among which are the following:

"Whereas by the Act of July first, nineteen hundred and two, Congress, by the second section thereof, enacted that 'the action of the President of the United States theretofore taken by virtue of the authority vested in him as Commander-in-Chief of the Army and Navy, as set forth in his order of July twelfth, eighteen hundred and ninety-eight, whereby a tariff of duties and taxes, as set forth said order, so to be levied and collected at all ports and places in the Philippine Islands upon passing into the occupation and possession of the forces of the United States, together with the subsequent amendments of said order, are hereby approved, ratified, and confirmed, and the actions of the authorities of the government of the Philippine Islands, taken in accordance with the provisions of said order and subsequent amendments are hereby approved'; and

"Whereas in a cause pending in the Supreme Court of the United States that court has decided that the language of section two of the Act of July first, nineteen hundred and two, above quoted, properly construed, only applies to such a tariff of duties levied and collected in the Philippine Islands before April eleventh, eighteen hundred and ninety-nine, and does not extend to and con-

firm and ratify such duties collected from July twelfth, eighteen hundred and ninety-eight, to March eighth, nineteen hundred and two; and

"Whereas a claim for a refund of the duties levied and collected between the dates above mentioned, to wit, from July twelfth, eighteen hundred and ninety-eight, to March eighth, nineteen hundred and two, is inequitable in that the importers of such goods who are now claiming refunds in fact reimbursed themselves for the payment of the duties by the sale of such goods in the markets in the Philippines at prices which included the duties."

Italics ours.

The sole and lawful purpose accomplished by the Act of June 30, 1906, was, as stated, to prevent importers from recovering from the United States Treasury moneys which had already been returned to them through the sale of the imported goods at figures which included the tariff duties they had paid thereon. The facts in the case at bar are quite to the contrary, for appellant seeks relief only from double duties, which have always been held obnoxious by this and all other enlightened nations of the world.

VII.

Protest and Duress.

The payment by appellant to the United States officials at Manila was under duress of business.

March 4, 1899, appellant's firm made application at Manila to "open register to allow of steamship Knivsberg receiving a cargo for Hong Kong," but the Collec-

tor of Customs refused to receive further business from the firm until the duties upon the cargo of rice discharged at Cebu should be paid. (Rec. 11, Finding XII.) In other words, the Collector refused to allow the claimant's firm to ship a cargo from Manila to Hong Kong but upon payment of duties upon the cargo of rice discharged at Cebu. On account of that refusal, and in order that appellant's firm might transact further business with the Collector of Customs at Manila, there was paid to that official, involuntarily and under protest, $5,578.89 as duties on that cargo of rice. The first payment made March 6, 1899, was $56.14 short of the whole amount, and so, twelve days later, the Collector required the payment of that additional amount, which was done under protest and pursuant to his demand for further duties on that cargo. (Ibid.)

The firm had to pay or lose its right to do business. The case therefore falls under the rule laid down in—

De Lima v. Bidwell, 182 U. S., 1, 174-180;
Downes v. Bidwell, 182 U. S., 244-247;
Raditch v. Hutchins, 95 U. S., 210, 213;
Maxwell v. Griswold, 10 How., 242, 256.

A case particularly in point is *Swift Co. v. United States*, 111 U. S., 22, 28-30, where the conduct of the revenue officials was such as, in effect, to say to appellant, to use the language of this court,

> that unless it complied with the exaction it should not continue its business; for it could not continue business without stamps, and it could not purchase stamps except upon the terms prescribed by the Commissioner of Internal Revenue.

That case was quoted from with approval in *Robertson v. Frank*, 132 U. S., 17, 23.

We submit that the judgment of the court below should be reversed, with a direction to render a judgment in favor of appellant for $5,578.89.

BARRY MOHUN,
L. T. MICHENER,
J. N. WOLFSON,
P. G. MICHENER,
Attorneys for Appellant.

In the Supreme Court of the United States.

OCTOBER TERM 1912.

WILLIAM STEWART MACLEOD, AS SOLE surviving partner of the partnership of MacLeod & Co., appellant,
v.
THE UNITED STATES.
No. 259.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This is a suit to recover $5,578.89, the amount of certain import duties exacted by the United States military collector of customs at Manila, upon a cargo of rice shipped from Saigon, China, direct to the port of Cebu, Philippine Islands, in the month of January, 1899, *after* the signing of the treaty of peace between Spain and the United States, but *before* its ratification.

By an Executive order dated July 12, 1898, the President had previously directed that upon the occupation and possession of any ports and places in the Philippine Islands by the forces of the United

States certain tariff duties and taxes should be levied and collected as military contributions, and that all questions arising under said tariff and regulations should be decided by the general in command of the United States forces in those islands. (Finding VIII, Rec., p. 9.)

Material Facts Omitted from Appellants' Statement of Case.

As counsel for appellants have omitted from their statement and chronological table of essential facts in the case (brief, pp. 2–5), all reference to 5 out of 12 of the findings of fact made by the court below (i. e., Findings III, IV, V, VI, and VII, Rec., pp. 7–9), and as the findings thus omitted embody the facts upon which the opinion of the court below is primarily based, it becomes necessary for us to submit our own statement of the case in more detail than would otherwise be deemed necessary.

At and prior to the time when this controversy arose the appellant and two others composing the partnership firm of MacLeod & Co. were doing a general mercantile business in the Philippine Islands and in other parts of the Orient, with their head offices at Manila, where they also transacted such business. All the members of the firm were subjects of Great Britain, and the appellant, the sole surviving partner, still is a subject of that country, residing at Manila. (Finding I, Rec., p. 6.)

On the 13th of January, 1899, the appellant firm chartered at Manila from her owners the steamship

Venus, an American registered vessel flying the American flag, and cleared her in ballast to Saigon, China, from whence she sailed on January 22 with a cargo of rice consigned to the appellant firm at the port of Cebu, island of Cebu, in the Philippine Archipelago. (Finding II, Rec., p. 7.)

Previous to these dates it had been the practice of the military authorities at Manila to require resident importers at that port, shipping rice to points in the Philippine Islands, other than Manila, not actually occupied by the military forces of the United States, to present certified manifests covering such cargo, and to pay the duties thereon to the United States military collector of customs at Manila, which practice was matter of common knowledge and discussion among the business men of Manila; aside from this, however, there was no evidence charging appellants with knowledge of this fact. (Finding III, Rec., p. 7.)

On or about the 18th of January, 1899, or five days after the *Venus* cleared from Manila to Saigon, the military collector of customs of Manila was informed by certain business interests of that city that the appellant firm proposed to ship a cargo of rice by the *Venus* direct from Saigon to Cebu, and did not intend to enter the cargo or pay the duty thereon at Manila. The collector was further informed that said business interests were likewise engaged in the importation of rice into the Philippine Islands, and that they had, in carrying on such business, complied with the requirements imposed by the United

States authorities, and had paid duties upon similar cargoes at Manila, and that under such unfair competition they would be unable to carry on further trade.

On the same date the collector of customs at Manila inquired of the United States consul at Saigon by cable as to the facts thus reported, and on January 21, 1899, received a cable reply from the consul, confirming said report and informing the collector that the *Venus* would sail direct for Cebu upon the following day. (Finding IV, p. 7.)

Thereafter, on January 23, 1899, the military collector officially notified the appellant firm by letter that he had been informed of the sailing of the *Venus* direct to the port of Cebu with said cargo, and that a certified manifest of her cargo must be presented and the duties paid thereon at the custom-house at Manila.

On the following day a member of the appellant firm presented in person a letter (set out in full in Finding VI, Rec., p. 8), addressed to the military collector, acknowledging receipt of such notice and stating in substance that the *Venus* was openly dispatched for Saigon, there to load a cargo of rice for the Philippines; that before leaving Manila her captain was instructed to furnish himself with United States consular papers if ordered to Cebu (orders being sent by cable), in case that port should be in possession of the United States authorities on his arrival; that according to their last advices Cebu was in the hands of the republican government, and there were no

American authorities there; that appellants felt certain the Cebu authorities would exact duties on the cargo in the same amount as if collected under the tariff in force at Manila; that in selling the cargo appellants had in fact given a guaranty to the buyer that the duty would not exceed the Manila tariff; that if duty was exacted by the Cebu authorities the firm could not afford to pay it a second time in Manila, and for their own protection must protest against so doing, since it was through no fault of theirs that the duty goes to the Cebu customhouse; and that—

> As our desire, however, is to pay all the respect we possibly can to your notification, we will, if you so instruct us, request our Cebu friends to protest against the payment of any duty in Cebu in view of the Cebu customs being at present under your control, according to your text under reply. (Finding VI, Rec., p. 8.)

At the time of personally presenting this letter the member of the appellant firm informed the military collector that one of the firm's ships was about to leave Manila for Cebu and would reach there in time to head off the *Venus* before discharging; that appellants' intention in so advising the collector was that the collector might take such steps as he thought most expedient in the interest of the Government, but that appellants had no intention of deviating the *Venus* from her course or stopping the discharge of her cargo unless ordered by the United States

authorities to do so; and that it was appellants' intention to carry out their contract with the buyers of the cargo at Cebu even at the loss involved in the payment of double duties.

The ship thus referred to sailed from Manila the same day and arrived at Cebu before the *Venus* had reached that port. (Finding VII, Rec., pp. 8 and 9.)

The treaty of peace between the United States and Spain, although signed on December 10, 1898, was not ratified and proclaimed by the two countries until the 11th of April, 1899. In the interval, to wit, on December 25, 1898, the Spanish forces, civil and military, evacuated the island of Cebu, and within 48 hours thereafter, a so-called Philippine republic, of which Aguinaldo was the head, composed of native inhabitants who had formerly been in insurrection against Spain, took possession of the island and administered its affairs until the 22d of February following, when possession was surrendered to the United States. (Finding IX, p. 10.)

In the meantime the *Venus* arrived at Cebu on January 29, 1899, and the officers of the so-called native government promptly demanded payment of duties on her cargo and refused to allow the cargo to be discharged until such payment was made. Six days later, on February 4, 1899, the appellants' agent at Cebu paid under protest the full amount of the duties thus demanded to the so-called native government, and the cargo was thereafter discharged and subsequently delivered to the purchaser at Cebu. (Finding X, p. 10.)

Thereafter, in March, 1899, the military collector of customs at Manila, in accordance with his previous notice of January 23, 1899, demanded of appellants payment to him of the customs duties on the cargo thus landed at Cebu, and refused appellants permission to do further business at the Manila customhouse until such duties were paid. The appellants thereupon paid the full amount of the duties thus demanded under protest to the military collector at Manila, which were the same in amount as had previously been paid to the so-called native government at Cebu, and subsequently brought this suit in the Court of Claims to recover the same.

The Court of Claims held that appellants were not entitled to recover and dismissed their petition, whereupon the appellants perfected this appeal.

The Government's Defense.

The Government rests its defense in this suit upon two propositions of law:

FIRST.

> That the collection of the duties in question at Manila was a valid and lawful exercise of the war power vested in the military commander of the United States forces in the Philippine Islands.

SECOND.

> That the collection of said duties was fully ratified and confirmed by the act of Congress approved June 30, 1906 (34 Stats., 636), construed by this court in the case of *United States* v. *Heinszen* (206 U. S., 370).

ARGUMENT.

The general right of a military commander, under the war power, to govern territory of the enemy after its conquest and prior to the ratification of a treaty of peace is not open to question.

Cross v. *Harrison*, 16 How., 164.
Dooley v. *United States*, 182 U. S., 222.
De Lima v. *Bidwell*, 182 U. S., 1.
Fourteen Diamond Rings, 183 U. S., 176.

As declared by this court in the case of *New Orleans* v. *The Steamship Company* (20 Wall., 387–394):

> In such cases the conquering power has the right to displace the preexisting authority and to assume to such extent as it may deem proper the exercise by itself of all the powers and functions of government. It may appoint all the necessary officers and clothe them with designated powers, larger or smaller, according to its pleasure. It may prescribe the revenues to be paid and apply them to its use or otherwise. It may do anything necessary to strengthen itself and weaken the enemy. There is no limit to the powers that may be exerted in such cases save those which are found in the laws and usages of war. These principles have the sanction of all publicists who have considered the subject.
>
> See also *Thirty Hogsheads of Sugar* v. *Boyle*, 9 Cr., 191; *Fleming* v. *Page*, 9 How., 603; *American Ins. Co.* v. *Canter*, 1 Pet., 511.

THE CLAIMANTS' CONTENTIONS.

The claimants insist, however, that these well-settled principles do not apply to the case at bar because—

1. The United States did not occupy or possess Cebu until February 22, 1899, after the cargo in question had been discharged and the first payment of the duties made to the alleged insurgent government.

2. That the duties were lawfully paid to the local authorities at Cebu and it was illegal for the United States to require the second payment at Manila.

THE OCCUPATION OF CEBU.

It is conceded that the military forces of the United States did not take actual possession of the island of Cebu until after the first payment of the duties had been made to the native insurgents, but that fact does not affect the point at issue in this case.

The question here is as to the right of the military commander, under the war power, to prescribe rules and regulations governing importations of merchandise, not by inhabitants of Cebu, but by residents of Manila, claiming the protection of the United States, into the enemy's territory.

While it is true that the treaty of peace between the United States and Spain was signed December 10, 1898, the war did not cease nor title to the island of Cebu vest in the United States, in so far as the

rights of third parties were affected, until the exchange of ratifications on the 11th of April, 1899. (*Haver* v. *Yaker*, 9 Wall., 32; *Dooley* v. *United States*, 182 U. S., 222.)

It follows, therefore, that until such ratification the island of Cebu continued to be hostile territory, and all commercial intercourse between its inhabitants and the inhabitants of Manila, then under military occupation of the United States, was prohibited by the rules of international law. (*Wheaton's International Law*, 422; *Montgomery* v. *United States*, 15 Wall., 395.)

As is well said in the opinion of the court below:

> Doubtless the military authorities of the United States could grant permission so to trade and it seems had done so in this case. But they had granted this privilege upon the condition that the duties upon importations into the different ports of the Philippine Islands must be paid at Manila. This condition the claimants failed to comply with in the first instance, and the exaction of these duties at a later date was well within the authority of the military commander at Manila.
>
> As to the duties and obligations of the claimants while doing business at Manila under the American flag, it hardly needs citation of authorities to the effect that for the time being they owed allegiance to the military authorities of the United States at that place. Any lawful regulation imposed by the collector of that port was as binding upon them as though they had been native-born citizens. (*Taylor's International Law*, 467; *Carlisle* v. *United States*, 16 Wall., 147.)

The only recognized belligerents in the Philippine Islands, prior to the ratification of the treaty, were the United States and Spain. The fact that Spain evacuated Cebu prior to the date fixed by the treaty (upon exchange of ratifications, Art. V, 30 Stat., 1756) and before the United States took actual possession of that island is not material, in view of the fact that Cebu was not open to commerce to residents of Manila in any event until March 14, 1899, upon which date the American authorities declared Cebu to be a port of entry. (Finding VIII, Rec., p. 9.)

Hence it is clear that the appellants landed their cargo and paid the alleged duties demanded by the native inhabitants of Cebu at their peril, well knowing that duties in the same amount would be exacted thereon by the military authorities at Manila.

The principle of United States v. Rice, 4 Wheat., 246, 255, upon which appellants rely, directly supports the Government's contention in this case.

Appellants contend, however, that the payment of duties to the native inhabitants of Cebu was payment to a *de facto* government, and therefore exempted appellants from further payment to the United States, upon the familiar principle that duties once paid in a port of a country in possession of an enemy are not liable again to be paid when the enemy is expelled or withdrawn, citing *United States* v. *Rice* (4 Wheaton, 246, 254), and a letter of instructions from Mr. Fish, our Secretary of State, to our minister to Mexico. (1 Wharton International Digest, sec. 7, pp. 29–30.)

It is manifest, however, that neither the principle nor the authorities relied upon support this contention. In each of the cases cited the importer, from whom a second duty was demanded, was a resident of territory in the possession and occupation of an enemy who held it by military conquest, and who was, of course, subject to such laws, and only such laws, as that enemy chose to recognize or impose during its occupation. In the case at bar the importers were residents, not of the island of Cebu, but of the city of Manila, conducting their business under the protection of the United States military authorities. Their obligation to comply with the law was due, therefore, not to the Kingdom of Spain nor to the rebellious natives of Cebu, but to the United States.

THE EXECUTIVE ORDER OF JULY 12, 1898.

But it is declared that the order of the President of July 12, 1898, as Commander in Chief of the United States forces (Finding VIII, Rec., p. 9), expressly limited the collection of the prescribed tariff of duties and taxes to such ports and places as were in the actual occupation and possession of the United States; from which it is argued that no authority for the imposition of any duties or taxes existed in the islands unless specified in that order.

Appellants have apparently overlooked the fact referred to by this court in *Lincoln* v. *United States* (202 U. S., 499), that after the treaty was signed, December 10, 1898, "the President, on December 21, issued an order proclaiming the sovereignty of the United States in the islands and directing duties and

taxes to be collected in the future as public revenues for the support of the Government." See also Messages of the Presidents, volume 10, page 218.

Moreover, the order of July 12, 1898, in express terms specifies a rule of conduct for the military commanders at ports and places in actual occupation and possession of the United States forces. The discretion of the military commander, however, was left wholly untrameled to make such rules and regulations governing trade in hostile territory not actually occupied or possessed by the United States forces as the exigencies of the occasion required. Furthermore, the collection here complained of was exacted at Manila, which was a port in the actual occupation and possession of the United States.

THE RATIFICATION ACT OF JUNE 30, 1906 (34 STATS., 636).

Aside, however, from these considerations, any doubt that might possibly exist, as to the authority of the military collector at Manila to collect the duties here in question, is completely removed by the terms of the ratification act of June 30, 1906, *supra*, which provides:

> That the tariff duties, both import and export, imposed by the authorities of the United States or of the provisional military government thereof in the Philippine Islands prior to March eight, nineteen hundred and two, at all ports and places in said islands, upon all goods, wares, and merchandise imported into said islands from the United States or from foreign countries, or exported from said islands, are hereby legalized and ratified, and

> the collection of all such duties prior to March eight, nineteen hundred and two, is hereby legalized and ratified and confirmed as fully to all intents and purposes as if the same had by prior act of Congress been specifically authorized and directed.

Appellants, while apparently conceding the power of Congress to ratify in the manner and to the extent for which we contend, nevertheless insist that the act of ratification, being in terms confined to "tariff duties," in the narrow and restrictive sense was not intended to legalize or ratify mere illegal exactions of money by the military authorities under the guise of duties.

Precisely the same contention was urged in behalf of the appellee importers and rejected by this court in the case of *United States* v. *Heinszen* (206 U. S., 381) respecting duties admitted to have been illegally exacted in the Philippine Islands on merchandise brought from the United States after the ratification of the treaty but before Congress had enacted tariff duties for the Philippine Islands. In that case the present Chief Justice, speaking for the court, said (p. 382):

> As the text of the act of Congress is unambiguous and manifests as explicitly as can be done the purpose of Congress to ratify, the case comes to the simple question whether Congress possessed the power to ratify which it assumed to exercise. When the controversy is thus reduced to its ultimate issue we think the error committed by the court below,

both in reason and authority, is readily demonstrable.

That where an agent, without precedent authority, has exercised in the name of a principal a power which the principal had the capacity to bestow, the principal may ratify and affirm the unauthorized act, and thus retroactively give it validity when rights of third persons have not intervened, is so elementary as to need but statement.

Since appellants do not dispute the authority of Congress prior to the ratification of the treaty to prescribe such conditions as it deemed necessary upon trade under its own flag with the various ports in the Philippine Islands, it matters not whether the military commander exceeded his authority in exacting the duties here in question. His action having been subsequently ratified and approved, appellants are clearly not entitled to recover, and the judgment should accordingly be affirmed.

FREDERICK DE C. FAUST,
Acting Assistant Attorney General.

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MACLEOD *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 259. Argued April 25, 1913.—Decided June 10, 1913.

The local government of a conquered country being destroyed, the conqueror may set up its own authority and make rules and regulations for the conduct of temporary government, and to that end may collect taxes and duties to support the military authority and carry on operations incident to the occupation.

An occupation giving the right to the conqueror to exercise governmental authority must be not only invasion but also possession of the enemy's country.

Messages and papers of the Presidents may be referred to by the courts as matters of public history.

The military occupation by the United States, during and after the war with Spain, of the Philippine Islands, and the conduct of the military government thereof, did not extend to places which were not in actual possession of the United States, until they were reduced to such possession.

Executive orders regarding the collection of duties on goods imported into the Philippine Islands during the military occupancy thereof by the United States did not apply to any ports, such as Cebu, during the time that they were not in the possession and under the control of the United States.

The principles of international law were recognized by the Executive in issuing orders concerning the government of the Philippine Islands during military occupancy thereof, and this court will not construe an order directing payment of duties on imports as relating to goods brought into ports in the possession of the *de facto* government of the insurgents.

The fact that the importer of goods brought into a port of the Philippine Islands which had not been reduced to possession by the United States but was still under control of a *de facto* government of the insurgents resided in Manila which was under military occupancy did not make him subject to the executive order of July 12, 1898, to pay duties on such goods.

A state of war, as to third persons, continued during and after the war with Spain until the ratification of the treaty of peace.

The act of June 30, 1906, c. 3912, 34 Stat. 636, ratifying executive acts imposing duties, does not apply to duties collected at points which the United States had not occupied and which were in possession of insurgent *de facto* governments. *United States* v. *Heinszen*, 206 U. S. 370, distinguished.

Statutes relating to territory occupied by the military forces of the Government should be construed in the light of the purpose of the Government to act within the principles of international law, the observance of which is essential to the peace and harmony of nations.

Duties collected by the United States on cargoes imported at ports in the Philippine Islands which had not been reduced to possession by the United States but were in possession of the *de facto* government of insurgents were an illegal and unwarranted exaction covered neither by the order of the President nor the ratifying acts of Congress.

45 Ct. Cl. 339, reversed.

THE appellant, William Stewart MacLeod, surviving partner of MacLeod & Company, brought suit in the Court of Claims to recover from the United States the amount of certain duties paid by the firm under protest upon a cargo of rice imported into the Island of Cebu at the city and port of the same name, in the Philippine Islands, on January 29, 1899. The Court of Claims decided in favor of the United States and rendered judgment dismissing the petition. 45 Ct. Cls. 339. The case was then appealed to this court.

The Court of Claims made findings of fact, the substance of which is as follows:

The claimant firm, comprised of the appellant (the survivor) and two others, all citizens of Great Britain, had its head office at Manila and was engaged in doing a

general mercantile business there and elsewhere in the Orient. On January 13, 1899, the claimants chartered an American steamship, the Venus, at Manila and cleared her in ballast for Saigon, China, whence she sailed for the port of Cebu with a cargo of rice on January 22nd, carrying the usual consular papers. Prior to that time it had been the practice of the military authorities at Manila to require importers, residing in that city and shipping rice to points in the Philippines not actually occupied by the United States forces, to present certified manifests covering their cargoes and to pay the duties thereon to the United States military collector of customs at Manila, which practice was a matter of common knowledge and discussion among the business men in that city, but there is no other evidence charging the claimants with knowledge of the fact.

The collector at Manila was informed by competitors of the claimants that the latter proposed to ship the cargo to Cebu without paying duty at Manila and that, as they complied with the requirements of the United States authorities, they would be unable to compete, under such unfair conditions, with the claimants; and the collector received confirmation of such report from the consul at Saigon on the twenty-first of January, and on the twenty-third officially notified the claimants that a certified manifest must be presented and duties paid on the cargo at the custom house at Manila. The next day one of the claimants presented in person to the collector a letter stating that there had been no secret as to the movement of the Venus; that she had been openly dispatched to Saigon to load a cargo of rice for the Philippines, and that the captain had instructions to secure consular papers, if ordered to Cebu, in case that port should be in the possession of the United States authorities upon his arrival, and that they presumed his papers were in order; that according to their advice Cebu was in the hands of the republican gov-

ernment, whose authorities would exact the payment of duties, the same in amount as under the Manila tariff; that in selling the cargo they had been required to guarantee that the duties would not exceed those under the Manila tariff; that the claimants protested against paying the duties twice, as it was through no fault of theirs that the duties went to the Cebu authorities, and that, desiring to respect the notification, they would, if instructed, request their Cebu friends to protest against the payment in Cebu because, according to the notification, the Cebu customs were under the control of the United States. At the same time the collector was informed that a ship of the claimants was about to leave Manila for Cebu, which would arrive in time to head off the Venus (which did in fact sail from Manila that day and arrived in Cebu before the Venus); that their intention in so advising the collector was that he might take the steps he thought most expedient, but that the claimants, unless otherwise ordered by the United States, intended to carry out their contract with the purchasers of the cargo, even if required to pay double duties.

Upon the arrival of the Venus at Cebu, January 29, 1899, the native government demanded the payment of duties on the cargo and refused to allow its discharge until such payment was made. On February 4, 1899, the duties were paid and the cargo delivered to the purchasers. Upon the arrival of the Venus thereafter at Manila, with a cargo from Cebu, she was at first prevented from discharging her cargo without paying the duties involved in this case, but later was permitted to do so. Subsequently the collector refused to receive further business from the claimants until the duties in question were paid, and because of such refusal and in order to transact further business with the collector, the claimants, involuntarily and under protest, paid the duties demanded.

War was declared with Spain on April 25, 1898, and on May 1, 1898, the forces of the United States captured Manila Bay and harbor. The following order of the President was thereafter promulgated:

"Executive Mansion, July 12, 1898.

"By virtue of the authority vested in me as Commander-in-Chief of the Army and Navy of the United States of America, I do hereby order and direct that upon the occupation and possession of any ports and places in the Philippine Islands by the forces of the United States the following tariff of duties and taxes, to be levied and collected as a military contribution, and regulations for the administration thereof, shall take effect and be in force in the ports and places so occupied.

"Questions arising under said tariff and regulations shall be decided by the general in command of the United States forces in those islands.

"Necessary and authorized expenses for the administration of said tariff and regulations shall be paid from the collections thereunder.

"Accurate accounts of collections and expenditures shall be kept and rendered to the Secretary of War.

"WILLIAM MCKINLEY."

The protocol of August 12, 1898, provided that "The United States will occupy and hold the city, bay and harbor of Manila, pending the conclusion of a treaty of peace which shall determine the control, disposition and government of the Philippines." Manila was opened as a port of entry on August 20, 1898, and Cebu on March 14, 1899. The executive order of July 12, 1898, was not proclaimed in Cebu until February 22, 1899, or later. The treaty of peace was signed on December 10, 1898, but ratifications were not exchanged until April 11, 1899. The Spanish forces evacuated the Island of Cebu on December 25, 1898, having first appointed a provisional governor. Shortly thereafter the native inhabitants, formerly in insurrection

against Spain, took possession of the Island, formed a so-called republic and administered the affairs of the Island until possession was surrendered to the United States on February 22, 1899, prior to which time no authorities of the United States had been in the Island and the United States had not been in possession or occupation of the Island, it having been up to that time in the actual physical possession of the Spanish and the people of the Island.

Mr. Barry Mohun and *Mr. L. T. Michener*, with whom *Mr. J. N. Wolfson* and *Mr. P. G. Michener* were on the brief, for appellant:

The court has jurisdiction. *Dooley* v. *United States*, 182 U. S. 222, 230; *Armstrong* v. *United States*, 182 U. S. 243.

The title of the United States to the Island of Cebu did not vest so far as the rights of individuals were concerned until the proclamation of the treaty of April 11, 1899. *Dooley* v. *United States*, 182 U. S. 222, 230; *Haver* v. *Yaker*, 9 Wall. 32.

The payment of duties by appellant to the *de facto* government in Cebu was lawful. *United States* v. *Rice*, 4 Wheat. 246, 253; *Coleman* v. *Tennessee*, 97 U. S. 536; *De-Lima* v. *Bidwell*, 182 U. S. 1, 184; *Downes* v. *Bidwell*, 182 U. S. 303; *Pearcy* v. *Stranahan*, 205 U. S. 257, 272; 1 Moore's Digest Int. Law, pp. 41 *et seq.*

The doctrine of the case of *United States* v. *Rice*, *supra*, has been uniformly recognized and enforced by the United States through its Department of State. *In Re Duties Collected at Mazatlan, Mexico*, 1 Wharton's Int. Law Dig., § 7, p. 29; *The Bluefields Case*, 1 Moore's Dig. Int. Law, pp. 49, 51.

The order of the President of July 12, 1898, could only be enforced at ports and places actually occupied by the military forces of the United States and was only ap-

plicable to imports made at such ports and places. *Lincoln* v. *United States*, 197 U. S. 419, 428; *DeLima* v. *Bidwell*, 182 U. S. 1, 199; Hall's Int. Law, 5th Ed., p. 448.

If there should be doubt as to the meaning of the Executive Order of July 12, 1898, it should be resolved in favor of appellant. *Hartranft* v. *Wiegmann*, 121 U. S. 609, 616; *American Net & Twine Co.* v. *Worthington*, 141 U. S. 468, 474.

The temporary allegiance owed by appellant to the United States as conqueror in possession of Manila did not justify the exaction of these moneys from him as duties upon an importation into Cebu.

The military commander at Manila while above the laws of the Philippine Islands was not above the laws of his own country, *Dooley* v. *United States*, 182 U. S. 222, 234, and was further restricted by the order of the President dated July 12, 1898, which was in accordance with the rules of International Law. *United States* v. *Rice*, *supra;* Hall's Int. Law, 5th Ed., *supra.*

The ratification act of June 30, 1906, 34 Stat. 636, is not applicable to this case. *United States* v. *Heinszen & Co.*, 206 U. S. 370; *Dooley* v. *United States*, *supra; Fourteen Diamond Rings* v. *United States*, 183 U. S. 176; *Warner, Barnes & Co., Ltd.*, v. *United States*, 197 U. S. 419; on re-hearing 202 U. S. 484; *The Charming Betsy*, 2 Cranch, 64, 118, The Hague Convention, 32 Stat. 1803–1826. See Article 42.

The legislative history of the ratification act negatives an intention on the part of Congress to have ratified this collection. Senate Bill, 6362, 59th Cong. 1st Sess.

Mr. Frederick De C. Faust, Acting Assistant Attorney General, for the United States:

The collection of the duties in question at Manila was a valid and lawful exercise of the war power vested in the

military commander of the United States forces in the Philippine Islands.

The general right of a military commander, under the war power, to govern territory of the enemy after its conquest and prior to the ratification of a treaty of peace is not open to question. *Cross* v. *Harrison*, 16 How. 164; *Dooley* v. *United States*, 182 U. S. 222; *De Lima* v. *Bidwell*, 182 U. S. 1; *Fourteen Diamond Rings*, 183 U. S. 176.

The conquering power has the right to displace the preëxisting authority and to assume to such extent as it may deem proper the exercise by itself of all the powers and functions of government. There is no limit to the powers that may be exerted in such cases save those which are found in the laws and usages of war. These principles have the sanction of all publicists who have considered the subject. *New Orleans* v. *Steamship Company*, 20 Wall. 387, 394. See also *Thirty Hogsheads of Sugar* v. *Boyle*, 9 Cr. 191; *Fleming* v. *Page*, 9 How. 603; *American Ins. Co.* v. *Canter*, 1 Pet. 511.

It is conceded that the military forces of the United States did not take actual possession of the island of Cebu until after the first payment of the duties had been made to the native insurgents, but that fact does not affect the point at issue in this case.

The question here is as to the right of the military commander, under the war power, to prescribe rules and regulations governing importations of merchandise, not by inhabitants of Cebu, but by residents of Manila, claiming the protection of the United States, into the enemy's territory.

While it is true that the treaty of peace between the United States and Spain was signed December 10, 1898, the war did not cease nor title to the Island of Cebu vest in the United States, in so far as the rights of third parties were affected, until the exchange of ratifications on the

eleventh of April, 1899. *Haver* v. *Yaker*, 9 Wall. 32; *Dooley* v. *United States*, 182 U. S. 222.

Until such ratification the Island of Cebu continued to be hostile territory, and all commercial intercourse between its inhabitants and the inhabitants of Manila, then under military occupation of the United States, was prohibited by the rules of international law. Wheaton's Int. Law, 422; *Montgomery* v. *United States*, 15 Wall. 395.

The only recognized belligerents in the Philippine Islands, prior to the ratification of the treaty, were the United States and Spain.

Appellants landed their cargo and paid the alleged duties demanded by the native inhabitants of Cebu at their peril, well knowing that duties in the same amount would be exacted thereon by the military authorities at Manila. *United States* v. *Rice*, 4 Wheat. 246, 255, upon which appellants rely, directly supports the Government's contention in this case.

The importers were residents, not of the island of Cebu, but of the city of Manila, conducting their business under the protection of the United States military authorities. Their obligation to comply with the law was due, therefore, not to the Kingdom of Spain nor to the rebellious natives of Cebu, but to the United States. As to the executive order of July 12, 1898, see *Lincoln* v. *United States*, 202 U. S. 499.

Any doubt that might possibly exist as to the authority of the military collector at Manila to collect the duties here in question is completely removed by the terms of the ratification act of June 30, 1906. See *United States* v. *Heinszen*, 206 U. S. 381.

MR. JUSTICE DAY, after making the foregoing statement, delivered the opinion of the court.

When the Spanish fleet was destroyed at Manila, May 1, 1898, it became apparent that the Government of the

United States might be required to take the necessary steps to make provision for the government and control of such part of the Philippines as might come into the military occupation of the forces of the United States. The right to thus occupy an enemy's country and temporarily provide for its government has been recognized by previous action of the executive authority and sanctioned by frequent decisions of this court. The local government being destroyed, the conqueror may set up its own authority and make rules and regulations for the conduct of temporary government, and to that end may collect taxes and duties to support the military authority and carry on operations incident to the occupation. Such was the course of the Government with respect to the territory acquired by conquest and afterwards ceded by the Mexican Government to the United States. *Cross* v. *Harrison*, 16 How. 164. See also in this connection *Fleming* v. *Page*, 9 How. 603; *New Orleans* v. *Steamship Co.*, 20 Wall. 387; *Dooley* v. *United States*, 182 U. S. 222; 7 Moore's International Law Digest, §§ 1143 *et seq.*, in which the history of this Government's action following the Mexican War and during and after the Spanish-American War is fully set forth: and also Taylor on International Public Law, chapter IX, Military Occupation and Administration, §§ 568 *et seq.*, and 2 Oppenheim on International Law, §§ 166 *et seq.*

There has been considerable discussion in the cases and in works of authoritative writers upon the subject of what constitutes an occupation which will give the right to exercise governmental authority. Such occupation is not merely invasion, but is invasion plus possession of the enemy's country for the purpose of holding it temporarily at least. 2 Oppenheim, § 167. What should constitute military occupation was one of the matters before The Hague Convention in 1899 respecting laws and customs of war on land, and the following articles were adopted:

OPINION

by the nations giving adherence to that Convention, among which is the United States (32 Stat. II, 1821):

"Article XLII. Territory is considered occupied when it is actually placed under the authority of the hostile army.

"The occupation applies only to the territory where such authority is established, and in a position to assert itself.

"Article XLIII. The authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all steps in his power to re-establish and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."

A reference to the Messages and Papers of the Presidents, to which we may refer as matters of public history, shows that the President was sensible of and disposed to conform the activities of our Government to the principles of international law and practice. See 10 Messages and Papers of the Presidents, 208, executive order of the President to the Secretary of War, in which the President said (p. 210):

"While it is held to be the right of a conqueror to levy contributions upon the enemy in their seaports, towns, or provinces which may be in his military possession by Conquest, and to apply the proceeds to defray the expenses of the war, this right is to be exercised within such limitations that it may not savor of confiscation. As the result of military occupation the taxes and duties payable by the inhabitants to the former government become payable to the military occupant, unless he sees fit to substitute for them other rates or modes of contributions to the expenses of the government. The moneys so collected are to be used for the purpose of paying the expenses of government under the military occupation, such as the salaries of the judges and the police, and for the payment of the expenses of the army."

To the same effect, executive order of the President to the Secretary of the Treasury, in which the President said (p. 211):

"I have determined to order that all ports or places in the Philippines which may be in the actual possession of our land and naval forces by conquest shall be opened, while our military occupation may continue, to the commerce of all neutral nations, as well as our own, in articles not contraband of war, upon payment of the rates of duty which may be in force at the time when the goods are imported."

And the like executive order of the President to the Secretary of the Navy (p. 212).

In pursuance of this policy, the order of July 12, 1898, was framed. By its plain terms the President orders and directs the collection of tariff duties at ports in the occupation and possession of the forces of the United States. More than this would not have been consistent with the principles of international law, nor with the practice of this Government in like cases. While the subsequent order of December 21, 1898, made after the signing of the treaty of peace, is referred to in the brief of counsel for the Government, it was not alluded to in the findings of fact of the Court of Claims; but we find nothing in that order indicating a change of policy in respect to the collection of duties. While the signing of the treaty of peace between the United States and Spain on December 10, 1898, was stated, the responsible obligations imposed upon the United States by reason thereof were recited and acknowledged and the necessity of extending the government with all possible dispatch to the whole of the ceded territory was emphasized, no disposition was shown to enlarge the number of ports and places in the Philippine Islands at which duties should be collected so as to include those not occupied by the United States, and the President said (p. 220):

"All ports and places in the Philippine Islands in the actual possession of the land and naval forces of the United States will be opened to the commerce of all friendly nations. All goods and wares not prohibited for military reasons, by due announcement of the military authority, will be admitted upon payment of such duties and other charges as shall be in force at the time of their importation."

The occupation by the United States of the city, bay and harbor of Manila pending the conclusion of a treaty which should determine the control, disposition and government of the Philippines was provided for by the protocol of August 12, 1898, and the necessity of further occupation, until the exchange of ratifications by the Government of Spain and the United States, was recognized by the President in the order of December 21, 1898. We have been unable to find anything in the executive or congressional action prior to the importation of the cargo now in question having the effect to extend the executive order as to the collection of duties during the military occupation to ports and places not within the occupation and control of the United States.

The statement of the facts shows that the insurgent government was in actual possession of the custom-house at Cebu, with power to enforce the collection of duties there, as it did. Such government was of the class of *de facto* governments described in 1 Moore's International Law Digest, § 20, as follows:

"But there is another description of government, called also by publicists a government *de facto*, but which might, perhaps, be more aptly denominated a government of paramount force. Its distinguishing characteristics are (1) that its existence is maintained by active military power within the territories, and against the rightful authority of an established and lawful government; and (2) that while it exists it must necessarily be

obeyed in civil matters by private citizens who, by acts of obedience rendered in submission to such force, do not become responsible, as wrongdoers, for those acts, though not warranted by the laws of the rightful government. Actual governments of this sort are established over districts differing greatly in extent and conditions. They are usually administered directly by military authority, but they may be administered, also, by civil authority, supported more or less directly by military force." *Thornington* v. *Smith*, 8 Wall. 1, 9.

The attitude of this Government toward such *de facto* governments was evidenced in the Bluefields case, a full account of which is given in 1 Moore's International Law Digest, pp. 49 *et seq.* In that case General Reyes had headed an insurrectionary movement at Bluefields and acquired actual control of the Mosquito Territory in Nicaragua. His control continued for a short time only, February 3 to February 25, 1899, and after the reëstablishment of the Nicaraguan Government at Bluefields it demanded of American merchants the payment to it of certain amounts of duty which they had been compelled to pay to the insurgent authorities during the period of their *de facto* control. The American Government remonstrated, and the duties demanded by the Nicaraguan Government were by agreement deposited in the British consulate pending a settlement of the controversy. The Department of State of the United States, upon receiving sworn statements of the American merchants to the effect that they were not accomplices of Reyes, that the money actually exacted was the amount due on bonds which then matured for duties levied in December, 1898, payments being made to the agent of the titular government who was continued in office by General Reyes, that payment was demanded under threat of suspension of importations, and that from February 3 to February 25 General Reyes was in full control of the civil and mili-

tary agencies in the district, expressed the opinion that to exact the second payment would be an act of international injustice; and the money was finally returned to the American merchants with the assent of the Government of Nicaragua.

A similar case appears in 1 Moore's International Digest, p. 49, in which our Government was requested by Great Britain to use its good offices to prevent the exaction by the Mexican Government of certain duties at Mazatlan, which had been previously paid to insurgents. The then Secretary of State, Mr. Fish, instructed our Minister to Mexico as follows:

"It is difficult to understand upon what ground of equity or public law such duties can be claimed. The obligation of obedience to a government at a particular place in a country may be regarded as suspended, at least, when its authority is usurped, and is due to the usurpers if they choose to exercise it. To require a repayment of duties in such cases is tantamount to the exaction of a penalty on the misfortune, if it may be so called, of remaining and carrying on business in a port where the authority of the government had been annulled. The pretension is analogous to that upon which vessels have been captured and condemned upon a charge of violating a blockade of a port set on foot by a proclamation only, without force to carry it into effect."

See also Colombian Controversy, 6 Moore's International Law Digest, pp. 995 *et seq.*

While differing somewhat in its circumstances, the case of *United States* v. *Rice*, 4 Wheat. 246, is an instructive case. In that case, during the War of 1812, the port of Castine, Maine, was captured by the British forces and during its occupation the British Government exercised civil and military authority over the people, established custom-houses and collected duties on goods. After peace and the reëstablishment of the American Govern-

ment at Castine the collector of customs claimed the right to collect duties upon the goods, and this court held that the duties could not be collected a second time. Mr. Justice Story, delivering the opinion of the court, after stating that the British Government was in full control of the port and authorized to collect duties, said (p. 254):

"Castine was, therefore, during this period, so far as respected our revenue laws, to be deemed a foreign port; and goods imported into it by the inhabitants, were subject to such duties only as the British Government chose to require. Such goods were, in no correct sense, imported into the United States. The subsequent evacuation by the enemy, and resumption of authority by the United States, did not, and could not, change the character of the previous transactions. The doctrine respecting the *jus postliminii* are wholly inapplicable to the case. The goods were liable to American duties, when imported, or not at all. That they were not so liable at the time of importation, is clear from what has been already stated; and when, upon the return of peace, the jurisdiction of the United States was reassumed, they were in the same predicament as they would have been if Castine had been a foreign territory ceded by treaty to the United States, and the goods had been previously imported there. In the latter case, there would be no pretence to say that American duties could be demanded; and, upon principles of public or municipal law, the cases are not distinguishable. The authorities cited at the bar would, if there were any doubt, be decisive of the question. But we think it too clear to require any aid from authority."

We observe that the learned justice puts the case of the importation of goods into a foreign territory afterwards ceded to the United States as one which under no pretense would afford an authority to collect duties upon goods previously imported there. We do not think that it was

the purpose of the executive order under which the government at Manila was instituted and maintained at the time of this importation to direct the collection of duties at ports not in the occupation of the United States, and certainly not at one actually in the possession of a *de facto* government, as is shown in this case.

It is said, however, that the claimants resided and were doing business at Manila and therefore were subject to the military authority there, and the authority of a conquering power, recognized in *New Orleans* v. *Steamship Company*, *supra*, 394, to regulate trade with the enemy and in its country is cited in support of the proposition. That there is such general authority, there can be no doubt. It is, however, not without limitation, and a local commander is certainly bound by the orders of the President as commander in chief, which in this case had limited tariff collections to ports and places occupied by the United States. And such authority is subject to the laws and usages of war (*New Orleans* v. *Steamship Co.*, *supra*, p. 394) and, we may add, to such rules as are sanctioned by established principles of international law.

A state of war as to third persons continued until the exchange of treaty ratifications (*Dooley* v. *United States*, 182 U. S. 222, 230), and, although rice, not being contraband of war, might have been imported (7 Moore's International Law Dig., pp. 683, 684), the authority of the military commander, until the exchange of ratifications, may have included the right to control vessels sailing from Manila to trade in the enemy's country and to penalize violations of orders in that respect. But whatever the authority of the commander at Manila or those acting under his direction to control shipments by persons trading at Manila and in vessels sailing from there of American registration, such authority did not extend to the second collection of duties upon a cargo from a foreign port to a port occupied by a *de facto* government

which had compulsorily required the payment of like duties.

It is further contended that, if the collection of duties was originally without authority, it was ratified by the act of June 30, 1906 (34 Stat. 634, 636, c. 3912), which provides:

"That the tariff duties both import and export imposed by the authorities of the United States or of the provisional military government thereof in the Philippine Islands prior to March eighth, nineteen hundred and two, at all ports and places in said islands upon all goods, wares, and merchandise imported into said islands from the United States, or from foreign countries, or exported from said islands, are hereby legalized and ratified, and the collection of all such duties prior to March eighth, nineteen hundred and two, is hereby legalized and ratified and confirmed as fully to all intents and purposes as if the same had by prior act of Congress been specifically authorized and directed."

The history of this act and others growing out of the Spanish-American War is fully set forth in *United States* v. *Heinszen & Co.*, 206 U. S. 370. This court had held that the President had no authority to order the imposition of duties subsequent to the ratification of the treaty, with reference to Porto Rico (*Dooley* v. *United States*, *supra*), and with reference to the Philippine Islands (*Fourteen Diamond Rings* v. *United States*, 183 U. S. 176). The act of July 1, 1902 (32 Stat. 691, c. 1369), was then passed by Congress, ratifying the action of the President in making the order of July 12, 1898, whereby duties had been collected at "all ports and places in the Philippine Islands upon passing into the occupation and possession of the forces of the United States," and amendments of that order, and ratifying such action of the authorities in the Philippines as was done in accordance with the orders of the President. In *Lincoln* v. *United States*, and

Warner, Barnes & Co., Ltd., v. *United States*, 197 U. S. 419, affirmed on rehearing in 202 U. S. 484, the act of July 1, 1902, was construed to apply only to duties collected prior to April 11, 1899 (when the treaty became effective). In this situation, the month following the decision of this court in 202 U. S. 484, *supra* (affirming the *Lincoln* and *Warner, Barnes & Co., Ltd., cases*) Congress passed the ratifying act now in question. *United States* v. *Heinszen & Co., supra*, 381.

Conceding that the act is broad enough in terms to cover tariff duties exacted under the authority of the President's orders before the ratification of the treaty, it is expressly limited to tariff duties, import and export, imposed by the authorities of the United States and of the provisional government of the Islands prior to March 8, 1902 (the date of the act of Congress temporarily providing revenue for the Philippine Islands, 32 Stat. 54, c. 140); and there is no expression of purpose in the statute to enlarge the executive orders of the President, which limited the collection of duties during our military occupation to ports and places actually held and occupied by the forces of the United States, or to ratify collections made where goods had been entered at a port not under American control and in possession of a *de facto* insurrectionary government, as is here shown.

The statute should be construed in the light of the purpose of the Government to act within the limitation of the principles of international law, the observance of which is so essential to the peace and harmony of nations, and it should not be assumed that Congress proposed to violate the obligations of this country to other nations, which it was the manifest purpose of the President to scrupulously observe and which were founded upon the principles of international law.

The act has the scope given to it in the case of *United States* v. *Heinszen & Co.*, 206 U. S. 370, namely, to ratify

"the collection of the duties levied under the order of the President," which, as we have seen, were tariff duties imposed at ports in the occupation and possession of the United States. The tariff duties upon the cargo of rice here in question were paid to the *de facto* authorities at Cebu, where the cargo was entered, and the payment made at Manila was not a tariff duty but an illegal and unwarranted exaction in the nature of a penalty, covered by neither the orders of the President nor the ratifying acts of Congress.

We think the Court of Claims was in error in holding the duties collectible at Manila under the circumstances related, and in adjudging that the act of June 30, 1906, ratified the conduct of the military authorities at Manila in compelling such payment. Its judgment will therefore be reversed and the case remanded to the Court of Claims with instructions to enter judgment for the claimant.

Reversed.